

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F003545

PAUL HENSLEY, EMPLOYEE	CLAIMANT
BRIDGESTONE/FIRESTONE, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, TPA	RESPONDENT

OPINION FILED JUNE 25, 2009

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

Claimant represented by HONORABLE AARON L. MARTIN, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed

OPINION AND ORDER

This matter is currently before the Full Commission on remand from the Arkansas Court of Appeals. In an opinion delivered May 6, 2009, the Arkansas Court of Appeals reversed and remanded the decision of the Full Commission which had affirmed and adopted the decision of the Administrative Law Judge. The Court instructed the Full Commission to consider Dr. Wilbourne's medical reports and to determine whether Dr. Beaver's treatment was geared toward management of the claimant's condition. Pursuant to the Court's remand, and based on our de novo review of the

entire record, the Full Commission has considered Dr. Wilbourne's reports and finds that the treatment provided by Dr. Beavers was geared toward management of the claimant's injury. Therefore, the claimant is entitled to additional reasonably necessary medical treatment by and at the direction of Dr. Beavers.

I. HISTORY

The claimant was injured on February 17, 2000, while pulling a 150-pound roller on a conveyor belt. He suffered from problems with his neck and low back. Initially, the respondents contended that the claimant's injury was to his low back only and controverted any benefits related to his neck. The claimant's entitlement to benefits for a cervical spine injury, including surgery, was the subject of a previous hearing. The neck injury was found to be compensable by an Administrative Law Judge and that decision was affirmed and adopted by the Full Commission on April 22, 2003. Thereafter, the claimant received treatment for his neck and low back, for which the respondents made payment through August 31, 2006.

In reliance on an opinion obtained by the respondents from Dr. Darin K. Wilbourn on May 9, 2006, indicating that the claimant had reached maximum medical

improvement, the workers' compensation claims specialist wrote a letter to the claimant on February 9, 2007, informing him that his claim had been closed. Therefore, when the claimant sought treatment from Dr. Beavers on April 2, 2007, these expenses were denied.

The controverted medical treatment began as a referral from the claimant's neck surgeon on May 24, 2005. On that date, Dr. Ron Williams said that the claimant was experiencing problems with muscle spasms in his back and neck and prescribed a muscle relaxant, Flexeril. Dr. Williams referred the claimant to Dr. Beavers so that he would not have to drive from Russellville to Little Rock to get his Flexeril prescription filled. On December 16, 2005, Dr. Beavers took over the claimant's medical care for difficulties relating to both the residuals from the neck injury and surgery and problems relating to the back injury. In February of 2006, the claimant moved some equipment at work and began experiencing increased difficulty with his low back, left hip, and left leg. Dr. Beavers arranged for physical therapy, continued the claimant on medication, prescribed a back brace, and ordered an MRI scan.

The claimant testified that he had been back to full duty work with the employer since December of 2003

and that the medications and physical therapy prescribed by Dr. Beavers had allowed him to continue to work.

The respondents sent the claimant to Dr. Wilbourn on May 9, 2006, and asked him to answer seventeen questions concerning various medical/legal issues. It was Dr. Wilbourn's opinion that the claimant suffered from "chronic low back pain" which was "related to the incident of February 17, 2000". He acknowledged that Dr. Beavers was treating the claimant with physical therapy and medications and responded in the affirmative to the question: "Is the claimant's current regime of medical care reasonable and necessary for the injuries sustained on February 17, 2007?". However, Dr. Wilbourn also indicated that the claimant had reached maximum medical improvement and was in need of no further medical treatment.

The Administrative Law Judge denied the claimant's request to continue the treatment of Dr. Beavers at the expense of the respondents. In so doing, she concluded that the claimant's condition resolved as of May 9, 2006, the day he was evaluated by Dr. Wilbourn. On September 17, 2008, the Full Commission affirmed and adopted the findings of the Administrative Law Judge. On May 6, 2009, the Arkansas Court of Appeals reversed and remanded

this case back to the Full Commission for further consideration.

II. ADJUDICATION

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. Ark. Code Ann. § 11-9-508(a) (Repl. 2002); American Greeting Corp. v. Garey, 61 Ark. App. 17 963 S.W.2d 613 (1998). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that 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); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Here, the evidence of record shows that the treatment provided by Dr. Beavers, specifically medications and physical therapy prescribed by Dr. Beavers allowed the claimant to continue to work. As such, it can certainly be

said that the treatment provided by Dr. Beavers was geared toward management of the claimant's condition. Considering Dr. Wilbourne's report, it would be error to disregard his affirmative answer to the question "Is the claimant's current regime of medical care reasonable and necessary for the injuries sustained on February 17, 2007?". Considering the above evidence, the Full Commission finds that the claimant has proved by a preponderance of the evidence of record that he is entitled to additional reasonably necessary medical treatment by and at the direction of Dr. Beavers.

III. CONCLUSION

Based on our de novo review of the entire record, and pursuant to the remand from the Court of Appeals, the Full Commission finds that the claimant proved his entitlement to additional reasonably necessary medical treatment by and at the direction of Dr. Beavers.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1,

2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner