

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E911422

DEANN E. DURHAM-GILPATRICK, EMPLOYEE	CLAIMANT
AEGON INSURANCE USA, EMPLOYER	RESPONDENT NO. 1
ST. PAUL FIRE & MARINE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED MAY 21, 2010

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

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

Respondent No. 1 represented by the HONORABLE NEAL L.
HART, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 did not participate.

Respondent No. 3 did not participate.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of
the Administrative Law Judge filed February 3, 2010. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On February 11, 1998, the claimant sustained a compensable injury arising out of and during the course of her employment with Aegon Insurance USA. The claim has been the subject of multiple hearings and appeals, all of which are now final and the law of the case. The claimant has previously been determined permanently totally disabled. Respondent #2 is paying appropriate indemnity benefits. Respondent #1 remains responsible for all reasonable medical and related expenses as the result of claimant's February 22, 1998, compensable injury.
3. The claimant has proven, by a preponderance of the credible evidence, that the psychiatric treatment provided by Dr. Thomas C. Stinnett is reasonably necessary medical treatment, which is causally related to the February 11, 1998, injury, specifically, a part of the claimant's program for pain management and should be paid by respondent #1 pursuant to Ark. Code Ann. §11-9-508.
4. Even if the claimant was required to prove that she sustained a mental injury pursuant to Ark. Code Ann. §11-9-113, which is not conceded herein, the claimant has established, by a preponderance of the evidence, that her diagnosis and treatment meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders (hereinafter DSM).
5. Respondents #1 have previously controverted claimant's entitlement to

additional medical treatment for pain management and have again specifically controverted the requested treatment herein for purposes of attorney's fees. This claim pre-dates Act 1281 of 2001 concerning controverted attorney's fees.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the February 3, 2010, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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 prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. §11-9-715 as it existed prior to the amendments of 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 \$250.00 in accordance with Ark. Code Ann. §11-9-715(b) (Repl. 1996).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's findings that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment in the form of psychiatric

treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

This claim has been before the Commission before and has a long and varied history. Suffice it say the claimant is permanently and totally disabled. The claimant has been receiving psychiatric treatment and at this juncture is requesting the respondents to pay for the treatment. The respondents contended that the treatment was not related to her compensable injury and that the claimant cannot prove that she sustained a compensable mental injury. The compensability of the mental injury was not raised by the respondents until the hearing and the Administrative Law Judge ordered post hearing briefs. The Administrative Law Judge found the treatment was reasonable and necessary and was casually related to her February 11, 1998, compensable injury as part of the claimant's program for pain management. The respondents appeal.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the

burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

In my opinion, a review of the evidence fails to demonstrate that the claimant is entitled to psychiatric treatment. The record is completely void of any medical records from Dr. Thomas Stinnett, the claimant's psychiatrist. The only evidence in the record is a report dated April 29, 2008, from Dr. Stinnett which states as follows:

This letter will serve to verify that the individual reference above is currently a patient in my care. I have followed her for a period of approximately nine years.

During the time that I have worked with Ms. Durham Gilpatrick the issue of her chronic pain has been paramount. It has been a factor that has exacerbated her depression, and has frequently contributed to her feelings of helplessness and hopelessness.

The psychiatric literature is full of references regarding the impact of chronic pain on mood state, and hence most pain management programs include mental health services.

There is no other records stating what treatment Dr. Stinnett is providing the claimant. For example, we have absolutely no evidence of what medications Dr. Stinnett has prescribed for the claimant. She testified that she is taking "fluoxetine, 40 milligram, a table a day. I take Butrin SR tables, 150 milligram, two tables a day. I take Lorazepam, 2 millgram, three times a day, and I take musline (phonetic) tablets, 5 milligram, twice a day." All of these drugs, except for musline which I was unable to discern from the testimony what it is, are used to treat depression. The claimant has a history of depression which predated her compensable injury. The claimant was the victim of domestic violence from her former husband. She took care of and watched another husband die. She took care of her mother who had dementia for over nine

years before she died. Her sister was convicted of murder. In fact, the claimant had taken Prozac before her compensable injury.

Simply put, I cannot find that the claimant has proven by a preponderance of the evidence that the psychiatric treatment with Dr. Stinnett is reasonable and necessary medical treatment. When I consider the fact that the record is completely void of any medical records from Dr. Stinnett, and the fact that the claimant has a history of depression before her compensable injury, I cannot find that the claimant has met her burden of proof. Accordingly, for all the reasons set forth herein, I must dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER