

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712515 & F901259

CATHRYN JOHNSON,
EMPLOYEE

CLAIMANT

BATESVILLE HEALTHCARE,
EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 29, 2010

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

Claimant represented by the HONORABLE FREDERICK "RICK" S.
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by the HONORABLE MELISSA WOOD,
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 July 8, 2010. The administrative law judge found that the claimant proved she was entitled to additional medical treatment in the form of pain management with Dr. Stewart. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that the claimant did not prove

she was entitled to additional medical treatment with Dr. Stewart.

I. HISTORY

Cathryn Ann Johnson, age 62, testified that she began working for Batesville Healthcare in June 2007. The parties' stipulations indicated that the claimant sustained a compensable injury to her left shoulder on or about October 8, 2007. The claimant testified that she felt a sharp pain in her left shoulder after reaching to grab a medical cart. The stipulations indicated that the claimant sustained another compensable injury to her left shoulder on or about November 17, 2007. The claimant testified that she tripped, fell, and injured her left shoulder.

The claimant's testimony indicated that Dr. W. Cody Grammer performed left rotator cuff surgery on November 28, 2007. The claimant testified that she received physical therapy for a total of 27 weeks following the November 28, 2007 surgery. The claimant testified, however, that "I couldn't raise the arm any further that I could when I first injured it."

The record indicates that Dr. Grammer diagnosed impingement in the claimant's left shoulder and performed a

closed manipulation on or about February 13, 2008; it was indicated that the claimant would reach maximum medical improvement on approximately June 1, 2008.

The claimant testified that the respondent-carrier subsequently ceased authorizing her to see Dr. Grammer, and that the respondents directed her for a "second opinion" with Dr. Charles D. Varela. Dr. Varela reported on May 28, 2008:

The patient is a 59-year-old female who reports that on October 8, 2007, she was pushing a med cart and apparently it got away from her and she went to grab it and experienced pain in her left shoulder. She subsequently was evaluated by Dr. Grammer at that time with MRI scan, which revealed apparent rotator cuff tear. She underwent diagnostic arthroscopy and rotator cuff repair in October 2007. This is since complicated with arthrofibrosis, which necessitated manipulation under anesthesia in February 2008. In the intervening time, she began having fairly similar symptoms on the right side without any evidence of trauma. She states she began having pain and losing range of motion spontaneously. She has had a long-term course of physical therapy, and according to the notes, she has plateaued her range of motion progress. She has had an MRI scan of her right shoulder, which revealed evidence of tendonitis of the supraspinatus. Also was diagnosed with mild adhesive capsulitis. She has had no other treatment of the right shoulder, except for physical therapy....

X-rays taken today show the shoulder to be essentially normal. No evidence of degenerative changes is appreciated.

IMPRESSION:

Bilateral arthrofibrosis of both shoulders.

PLAN:

This clinical picture is very difficult to explain in light of the history of her injury. It is difficult to explain why she would have spontaneous onset of arthrofibrosis bilaterally following a fairly benign injury on the left and essentially no evidence of injury on the right. I believe there may be secondary issues to be addressed here. I believe, as the patient has essentially plateaued with her progress in physical therapy, further physical therapy would not be useful. I recommend a subacromial injection today and see if any symptomatic change is noted in her pain. I recommend the patient return to work to avoid repetitive overhead activities, otherwise I think she can engage in normal activities. I think returning the patient back to normal activities as much as possible would help her functional outcome. Only if the patient experiences fairly dramatic relief of the pain in her shoulders would I recommend any surgical intervention, which may include diagnostic arthroscopy and manipulation. If minimal or no pain relief is noted on evaluation in 4 weeks, then I believe the patient has reached MMI and an impairment rating should be performed. In addition, on reviewing the patient's history, I see no evidence that her work injury on October 8, 2007 is in any way related or causative to her arthrofibrosis of her right shoulder. I do not know of any medical historical precedent to justify this.

The claimant testified on cross-examination that she received some benefit from injection treatment provided by Dr. Varela. Dr. Varela assigned the claimant a 6% anatomical impairment rating for the claimant's left

shoulder on June 18, 2008. Dr. Grammer informed the claimant on August 14, 2008, "It is my professional opinion that you should seek continued medical care for your shoulders with an Orthopaedic shoulder specialist. I recommend Dr. Syed Hasan or Dr. David Collins and they are both in Little Rock, AR."

The record does not show that the claimant treated with Dr. Hasan or Dr. Collins. Instead, a Change of Physician Order was entered on October 23, 2008: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Cathryn Johnson to change from Dr. Charles Varela to Dr. Jason Stewart[.]"

Dr. Jason G. Stewart, an orthopedic surgeon, reported on January 29, 2009:

She is here for follow-up after having performed a functional capacity evaluation. I have reviewed the results of this evaluation and the results showed that she demonstrated consistent performance. They were able to categorize her in the light duty level of work with a limited ability to perform (sic) work in the medium capability, according to the U.S. Department of Labor Standards.

PLAN:

On reviewing the conclusion of the functional capacity evaluation, I would have her at modified duty as of January 29, 2009, with the following restrictions: a 40-pound lifting limit from floor to waist, 20-pound lifting limit from waist to

shoulder, a 10-pound lifting limit from floor to shoulder, and a 30-pound carry limit; this is all on an occasional basis. These are permanent restrictions. She is at maximum medical improvement. The impairment rating is based on loss of range of motion of the left upper extremity. Using *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition, motions indicate a 10% impairment of the upper extremity, 6% whole person.

Also on January 29, 2009, Dr. Stewart signed a Physician's Status Report For Work-Related Injuries. Dr. Stewart checked boxes besides the statements, "Released from medical care on this date" and "Maximum medical improvent (sic) as of this date."

Dr. Stewart signed a Work Status Report dated February 5, 2009:

Ms. Johnson's functional capacity evaluation showed that she had limited ability to perform work in the median physical demand category, but she was fully able to satisfy the ability to work in the light physical demand category for an eight hour day. This includes occasional lift of 40 pounds from floor to waist, 20 pounds from waist to shoulder, and 10 pounds from floor to shoulder, and a maximum bimanual carry of 30 pounds, a maximum push force of 27 pounds and pull force of 30 pounds. The ability to maximum frequent lift 20 pounds from floor to waist and 20 pounds from waist to shoulder, and 10 pounds from floor to shoulder. The ability to perform sitting, reaching at desk level, reaching overhead, reaching at floor level, balancing, stooping, object handling, finger, simple hand grasp, firm hand grasp, and fine gross manipulation on a constant basis. She can perform standing,

walking, climbing stairs, kneeling, and crouching on a frequent basis. I would make these permanent restrictions for work in the light duty category.

A pre-hearing order was filed on April 19, 2010. The claimant contended that she continued to have pain in her left shoulder resulting from the compensable injury. The claimant contended that she was entitled to additional pain management from Dr. Jason Stewart.

The respondents contended that all appropriate benefits had been paid and were continuing to be paid, and that medical benefits had not been denied. The respondents contended that they had no medical documentation indicating a need for additional medical treatment, and they requested that the claimant's attorney provide such documentation for consideration. The respondents contended that the claimant saw Dr. Jason Stewart on January 29, 2009 and was released at that time.

The parties agreed to litigate the following issues:

1. Constitutional issues.
2. The claimant's entitlement to reasonably necessary medical treatment by Dr. Stewart.

A hearing was held on May 19, 2010. The claimant testified that she had seen Dr. Stewart on two occasions. The respondents indicated that they had paid for both of the

claimant's visits with Dr. Stewart. The claimant testified that Dr. Stewart gave her injections in both shoulders, and that her physical condition improved following the injections. The claimant testified that she wanted to continue treating with Dr. Stewart.

An administrative law judge filed an opinion on July 8, 2010. The administrative law judge denied a motion to recuse filed by the claimant, and the administrative law judge found that the Workers' Compensation Act was constitutional. The claimant does not appeal these findings. The administrative law judge found that the claimant proved she was entitled to additional medical treatment for her compensable injury in the form of pain management with Dr. Stewart. The respondents appeal to the Full Commission.

II. ADJUDICATION

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary.

Fayetteville School Dist. v. Kunzelman, 93 Ark. App. 160, 217 S.W.3d 149 (2005). What constitutes reasonably necessary medical 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).

An administrative law judge found in the present matter, "6. The claimant proved by a preponderance of the evidence her entitlement to additional medical treatment for her compensable left shoulder injury, with Dr. Stewart, in form of pain management." The Full Commission does not affirm this finding. The parties stipulated that the claimant sustained compensable injuries to her left shoulder on October 8, 2007 and November 17, 2007. The claimant testified that Dr. Grammer performed left rotator cuff surgery in November 2007. Dr. Grammer performed another surgical procedure in February 2008. Dr. Varela treated the claimant beginning in May 2008 and eventually assigned a 6% anatomical impairment rating.

A Change of Physician Order was entered on October 23, 2008, in which the Commission approved a change from Dr. Varela to Dr. Jason Stewart. After the claimant exercised her statutory right to a one-time change of physician, the

respondents were required to pay for the initial visit to the new physician in order to fulfill their obligation to provide adequate medical services under the provisions of Ark. Code Ann. §11-9-508. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). The respondents in the present matter paid for two visits with Dr. Stewart. Based on the record, these visits occurred on January 29, 2009 and February 5, 2009. Dr. Stewart pronounced maximum medical improvement on January 29, 2009 and, like Dr. Varela, Dr. Stewart assigned the claimant a 6% anatomical impairment rating. The parties stipulated that the claimant was assigned a 6% anatomical impairment rating.

The Full Commission recognizes that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004), citing *Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). The claimant in the present matter testified that Dr. Stewart performed injection treatment for both shoulders. The record does not corroborate the claimant's testimony, in that none of Dr. Stewart's notes described a

recommendation for injection treatment. More importantly, the claimant contends that she is entitled to continuing treatment from Dr. Stewart in the form of injection therapy. The record does not corroborate the claimant's contention. Dr. Stewart expressly indicated on January 29, 2009 that the claimant was "Released from medical care on this date." The record does not demonstrate that Dr. Stewart recommended any further treatment, including injection treatment. Nor does the evidence corroborate the claimant's contention that the respondents interfered with the claimant's treatment with Dr. Stewart or prevented the claimant from treating with Dr. Stewart.

Based on our *de novo* review of the entire record currently before us, the Full Commission reverses the administrative law judge's finding that the claimant proved she was entitled to additional treatment in the form of pain management with Dr. Stewart. The Full Commission finds, based on the current record, that the claimant did not prove she was entitled to additional treatment with Dr. Stewart. This claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has met her burden of proving by a preponderance of the evidence that she is entitled to pain management from Dr. Stewart for her left shoulder injury.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). 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). The Court of Appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable injury. See Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Furthermore, this Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. See Maynard v. Belden Wire & Cable Company, Full Workers' Compensation Commission Opinion filed April 28, 1998 (E502002); See also Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission opinion filed June 20, 1991 (Claim No. 704562).

Here, the claimant sustained admittedly compensable injuries to her left shoulder on two separate

occasions, October 8, 2007 and November 17, 2007. The claimant's first injury to her left shoulder occurred while pushing a med cart down a hallway. The cart rolled away from her and, upon grabbing it, she injured her left shoulder.

She sustained a second compensable injury to her left shoulder on November 17, 2007, after having administered an inhalant treatment to a patient, when she tripped and fell as a result of her foot becoming entangled in his oxygen cords.

An MRI revealed "a rotator cuff tear." Therefore, the claimant underwent diagnostic arthroscopy and rotator cuff repair with Dr. Grammar.

Thereafter, she underwent closed manipulation under anesthesia, on February 13, 2008, which was also performed by Dr. Grammar, with a diagnosis of "impingement." The claimant has also received 27 weeks of physical therapy treatment.

Subsequently, Dr. Varela opined that the claimant had developed arthrofibrosis. He administered cortisone injections to the claimant's shoulders on May 28, 2008. The

claimant has acknowledged that these injections helped to alleviate her symptoms.

On June 18, 2008, Dr. Varela assessed the claimant with a 6% whole body impairment. Dr. Grammar opined on August 14, 2008 that the claimant should seek continued medical care for her shoulders with an orthopedic shoulder specialist. On January 29, 2009, Dr. Stewart placed permanent modified work duties on the claimant. At this time, he also opined that the claimant was at maximum medical improvement, and assessed her with a 6% whole body impairment for her compensable left shoulder injury.

The evidence demonstrates that, prior to the claimant's left shoulder injuries, she was very active. However, since this time, the claimant credibly testified that she has experienced ongoing debilitating pain and problems with her left shoulder, despite the surgeries and extensive physical therapy treatment. Her testimony is corroborated by the medical evidence of record.

Ms. Jones, the claimant's daughter, credibly testified that she has observed her mother in pain. Her testimony demonstrates that the claimant has had to resort

to extreme measures, such as cutting her hair short, because she is unable to use a curling iron.

No evidence has been presented to support a finding that the claimant experienced any prior shoulder problems. However, as a direct result of her admittedly compensable left shoulder injury, she has continued to be symptomatic.

The claimant credibly testified that the injections administered by Dr. Stewart helped relieve her symptoms. Her testimony demonstrates that Dr. Stewart has recommended injections for her compensable left shoulder injury. No evidence has been presented to the contrary.

She also testified that she has continued to receive pain management from her primary care physician and Dr. Siddiqui.

Therefore, considering the persistent and debilitating nature of the claimant's left shoulder symptoms despite two surgeries and extensive physical therapy treatment, her permanent work restrictions, the fact that the claimant had not experienced any prior left shoulder problems, and based on the expert opinion of Dr. Grammar, I find that the claimant proved her entitlement to additional

medical treatment, in the form of pain management, for her compensable left shoulder injury, under the care and direction of her treating physician, Dr. Stewart.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner