

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F907767

JAN MARSHALL, EMPLOYEE	CLAIMANT
CEDARVILLE PUBLIC SCHOOLS, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 14, 2011

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed March 2, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 10, 2010, and contained in a pre-hearing order filed February 11, 2010, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that the additional medical treatment by or at the direction of a chiropractor is both reasonable and necessary.

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 March 2, 2011, 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 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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment in the form of chiropractic treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant worked for the respondent employer as a school teacher. On March 12, 2009, she was struck by a custodial cart. The claimant felt pain in her lower back into her right leg and knee. The claimant sought treatment at the direction of the respondent employer with Dr. Holder. Dr. Holder released the claimant to return to work the next day. The claimant returned to Dr. Holder again on March 23, 2009. The claimant testified that she attempted to return to Dr. Holder in June but was told by an unnamed school secretary that she could not return. The claimant sought treatment with her chiropractor, Dr. Elliott Hays after her March 23, 2009 appointment with Dr. Holder. The claimant's first appointment with Dr. Hayes was on March 31, 2009.

The evidence demonstrates that the claimant has been seeing Dr. Hayes for spinal adjustments since the early 1990's. In fact, the claimant was seen by Dr. Hayes every six weeks to sixty days on a continuous basis. After the March 12, 2009 incident, the claimant was seen on a regular basis through May 12, 2009 but after that date, she was back to the regular six weeks to sixty days schedule.

The deposition of Dr. Hays was taken. Dr. Hayes acknowledged during his deposition that the

claimant's adjustments were for the entire spine, not just her neck and shoulders as she alleged. The claimant said that typically, Dr. Hayes gave her supportive care for her back and neck and occasional right shoulders. She attributed this to the stress of teaching.

The claimant contends that she had no lumbar problems prior to March 12, 2009. However, the claimant has degenerative spinal problems. X-rays taken by Dr. Holder on March 12, 2009, reflected degenerative facet changes. The claimant also underwent a bone density in November of 2002 that showed she had osteopenia. An MRI was done on March 9, 2010, almost a year after her injury which reflected disc dissection in a broad-based disc bulge at L4-5. There was also a central disc bulge and disc dissection at L5-S1 as well.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Supp. 2009). 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. Owens Plating Co .v. Graham, 102 Ark. App. 299, 284 S.W.3d 537 (2008). What constitutes reasonable and necessary treatment is a questions of fact for the Commission. Id. Anaya v.

Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W.3d 269 (2008). 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. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. Foster v. Kann Enterprises, 2009 Ark. App. 746 ___, S.W.3d ___ (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the treatment is geared toward management of the compensable injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The claimant testified that she wants additional medical treatment because her back is still giving her problems. However, after May 12, 2009, the claimant did not seek treatment from Dr. Hays until July 10, 2009. When asked about this break in treatment, the

claimant testified, "If I had problems, he would see me." I submit that the school year had ended and the claimant did not have the stress of teaching during that time period, either. The evidence demonstrates that the claimant returned to work without modification and taught for approximately forty days after the March 12, 2009 incident. She has also traveled extensively to Cozumel, Freeport Bahamas, St. Kitts and Aruba. She is also a member of the Razorback Corvette Club and traveled to Kentucky for a Corvette rally. She did not miss any Razorback football games in Fayetteville in 2010.

In my opinion, any problems the claimant had as a result of the March 12, 2009 incident were a temporary aggravation of a pre-existing condition and resolved by May 12, 2009. It is clear that the claimant has had a deteriorating spine since at least 2002 based upon her bone density scan. Any treatment that the claimant received after May 12, 2009, was due to the claimant's pre-existing degenerative condition and not to the claimant's compensable injury. Dr. Hays treated the claimant for her entire spine when he did her adjustments prior to this incident. Simply put, I cannot find that the claimant is entitled to additional medical treatment in the form of chiropractic treatment by Dr.

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Hayes. Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner