

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F902465

VICKY OVERTON, EMPLOYEE	CLAIMANT
YOUTH HOME, INC., EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 23, 2011

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

Claimant represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed June 30, 2011. 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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that she is entitled to

the additional medical treatment
recommended by Dr. Scott Bowen.

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 June 30, 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 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 as recommended by Dr. Scott Bowen. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant sustained an admittedly compensable injury while working for the respondents

employer on March 8, 2009. The claimant ultimately underwent knee surgery performed by Dr. Hudson. After the surgery, the claimant underwent a one-time change of physician to Dr. Scott Bowen, who has recommended that the claimant have injections. In my opinion, any treatment is due to the claimant's pre-existing arthritis.

Following her injury, the claimant underwent arthroscopic surgery performed by Dr. Stephen Hudson in the form of a partial medial meniscectomy and chondroplasty of the medial femoral condyle. When Dr. Hudson released the claimant on April 7, 2010, he stated that any further problems the claimant had were "mostly just the degenerative changes in her knee at this point".

The claimant exercised her one-time change of physician to Dr. Scott Bowen who recommended treatment for the claimant's arthritis and not her injury. On July 29, 2010, Dr. Bowen specifically stated,

at the current time, I believe the symptoms she is having are related to the arthritis and degenerative problems. I do not believe that this is related to any new or acute injury.

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).

It is clear that the claimant's need for treatment is for underlying, pre-existing arthritic and degenerative problems. The claimant's treating physicians have indicated that the treatment recommended was for a pre-existing condition. Further evidence of this is Dr. Bowen's opinion stated in his letter of March 21, 2011, that "she is currently having symptoms of arthritis and the treatment of her knee is due to the arthritic symptoms".

Therefore, when I consider all the evidence of record, I find that the treatment recommended by Dr. Bowen is for treatment of the claimant's pre-existing arthritic condition and is not causally connected to her compensable injury. Accordingly, I must respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner