

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F413066

ROBIN RAY, EMPLOYEE	CLAIMANT
CITY OF EUREKA SPRINGS, EMPLOYER	RESPONDENT NO. 1
MUNICIPAL LEAGUE WCT, CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 15, 2011

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

Claimant represented by the HONORABLE MARK FREEMAN, Attorney at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed March 17, 2011.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 6, 2011, and

contained in a pre-hearing order filed January 7, 2011, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that her complaints of thoracic spine pain are a compensable consequence of the August 23, 2004 compensable injury.
3. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her thoracic spine pain subsequent to August 18, 2010. Claimant is entitled to payment of all unpaid medical relating to her thoracic spine up to and including August 18, 2010.

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 of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

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 majority, by affirming and adopting the opinion of the Administrative Law Judge, has erred by cutting off reasonably necessary medical treatment on August 18, 2010, the MMI date for the lumbar, not the thoracic, injury. I find that the evidence of record shows that the claimant is entitled to additional reasonably necessary medical treatment for the thoracic injury after August 18, 2010.

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).

On August 18, 2010, Dr. Alan Scarrow stated: "Robin Ray has been a patient of mine that we operated on around two months ago. She is at maximum medical improvement at this point." The medical record shows that Dr. Scarrow operated on the claimant's lumbar spine on June 15, 2010. Obviously, Dr. Scarrow is referring to MMI for the claimant's lumbar spine, not her thoracic spine.

The medical records indicate that the claimant continued to have pain and problems from her thoracic spine. December 21, 2010 records from Dr. Regina Thurman indicate that "the claimant is complaining of upper back hurting today." "Last

steroid injection June 2010." "Her spine is tight in the cervical and thoracic muscle structure." The assessment was LBP and thoracic back pain. The plan was for a TENS unit and Ibuprofen 500 milligrams. As late as September 30, 2010, Dr. Thurman assessed the claimant with low back pain and thoracic back pain.

The fact that the claimant has reached MMI for a lumbar injury has absolutely no bearing on whether or not the claimant is entitled to additional reasonably necessary medical treatment for a thoracic injury. Treatment for managing pain, i.e., a TENS unit and Ibuprofen, fall specifically under the case law for reasonably necessary medical treatment. There has been no independent intervening cause, and for the Administrative Law Judge, and now the majority, to state that the claimant's complaints subsequent to August 18, 2010 (the date of MMI for the lumbar injury) are not causally related to her compensable thoracic injury is simply not supported by the evidence of record.

PHILIP A. HOOD, Commissioner