

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508000

MARLENE SERATT, EMPLOYEE	CLAIMANT
PHARMERICA, EMPLOYER	RESPONDENT NO. 1
THE HARTFORD, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 24, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents No. 1 appeal an opinion and order of the Administrative Law Judge filed February 7, 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 August 12, 2010, and contained in a pre-hearing order filed

August 17, 2010, are hereby accepted as fact.

2. The respondents shall reimburse the claimant for medical expenses in the form of visits to Dr. Petty's office on the following dates: March 7, 2008, April 10, 2008, June 17, 2008, September 23, 2008, January 6, 2009, May 4, 2009, May 7, 2009, June 22, 2009, July 1, 2009, July 8, 2009, March 12, 2010, April 15, 2010, July 8, 2010, and October 18, 2010.
3. The respondents shall reimburse the claimant for prescription medications she paid for associated with the treatment of the following symptoms; headaches, burning of the nose, throat and chest, photophobia, memory loss, shaking, confusion, and breathing problems from September 11, 2006, until October 18, 2010.
4. The claimant has proven by a preponderance of the evidence that treatment by a neurologist such as Dr. Michael Morse is reasonable and necessary medical treatment for her compensable occupational disease.

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 7, 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 was entitled to additional medical 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 was employed by the respondent employer on June 5, 2008, when she was exposed to carbon monoxide. This case has a long and varied history with the Commission. The initial hearing on this matter was on September 11, 2006. In an opinion dated November 30, 2007, the Full Commission awarded the claimant medical treatment for symptoms related to her compensable injury including headache, burning of the nose, throat and chest, photophobia, memory loss, shaking, confusion, breathing problems and other symptoms. In an opinion delivered by the Court of Appeals on June 18, 2008, it was reversed and remanded to the Commission. The Commission filed another opinion on August 19, 2008 that found that the claimant sustained a compensable occupational disease. In an opinion delivered April 22, 2009, the Court of Appeals affirmed the Full Commission's Opinion. Therefore, the claimant has, based upon the previous litigation, sustained a compensable

occupational disease. What is in contention at this point is whether or not the claimant is entitled to medical treatment she received with Dr. Corwin Petty and whether or not this is related to the claimants compensable 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).

The evidence demonstrates that the respondent has paid in excess of \$10,000 for medical expenses associated with the claimant's carbon monoxide exposure. The claimant has continued to treat with the same doctor who has treated her for the carbon monoxide exposure. However, that doctor has also treated her for depression, anxiety, hyperthyroidism, hormone imbalance, mood changes, fatigue, fibromyalgia, and Myositis. Because the medical expenses incurred appeared to be personal in nature and not related to the carbon monoxide exposure, the respondents stopped paying for the medical treatment rendered by Dr. Petty.

The record indicates that the claimant smokes 16 to 25 cigarettes per day. She thinks that she is worse from the 2005 exposure than she was shortly after the exposure. The claimant testified that she has sought treatment from Dr. Petty all this time for exposure

related to the carbon monoxide exposure. However, my review of the evidence demonstrates that the claimant has been receiving treatment for depression, anxiety, hyperthyroidism, hormone imbalance, mood changes, fatigue, fibromyalgia, and Myositis. None of these conditions are related to the claimant's exposure to carbon monoxide. In fact, the Commission made specific findings regarding the conditions that the respondent was responsible for paying for, and these conditions include: headache; burning of the nose, throat, and chest; photophobia; memory loss; shaking; confusion; breathing problems. None of the prescription medicines that the claimant has received from Dr. Petty are for conditions that are related to the carbon monoxide exposure.

The Administrative Law Judge set out all of the visits that he required the respondent carrier to pay for. Although the doctor may mention that the claimant had exposure to carbon monoxide, none of the medicine he prescribed, nor any of the conditions diagnosed at these visits are related to that carbon monoxide exposure.

The respondents offered the opinion of Dr. Henry Simmons, a noted toxicologist at the University of Arkansas for Medical Sciences. Dr. Simmons reviewed all of the claimant's medical records from the time that she

was exposed to the carbon monoxide. Dr. Simmons noted in his report:

Based upon the aforementioned evaluation, Ms. Serratt [sic] did not require medical care for carbon monoxide intoxication after 06/08/2005. Neurologically significant, acute toxicity that might have necessitated additional treatment was effectively excluded by her own history and the physical findings of independent health care providers. In fact, it cannot be said within reasonable or toxicological certainty that carbon monoxide even contributed to her complaints that day.

Ms. Seratt's somatic complaints after 06/08/2005 such as headaches, ear pain, congestion and vomiting, which cannot be linked to carbon monoxide exposure within a reasonable medical or toxicological certainty, have obvious potential explanations. For example, her chronic headaches as charted by Dr. Petty antedate the exposure and are likely multifactorial. Potential etiologies for them consistent with her past medical history include rebound related to her medications, muscle contraction, fibromyalgia, sinusitis, allergies and excessive smoking. Toxicity from carbon monoxide, however, does not cause headaches for days, weeks and months after its dissipation. In addition, well before 06/08/05 she had experienced coughing spells of such intensity that they caused her to vomit.

Although the precise nature of her ongoing neuropsychiatric complaints is more difficult to define, one also cannot attribute them to tissue injury from carbon monoxide within reasonable medical or toxicological

certainty. She was chronically fatigued and depressed long before June of 2008 and she had already attributed various unusual complaints to medically implausible etiologies. Both the depression and the peculiar ideation may well be causing her some ongoing distress. To cite some examples, on 06/29/2005 she complained to Dr. Petty of "memory loss" for "at least the last year" that she attributed to a hysterectomy in 2004. In 10/12/2005 he also charted her belief that she had been having increased problems with her legs alternately turning black and white since sometime in 2004, although physical examination revealed only common seborrheic keratoses. Despite the temporal inconsistency she still suspected that carbon monoxide had played a role in this problem. On 11/30/2005 she told Dr. Petty that she was "having pieces of unknown material which she thought was her fillings falling out of her teeth," yet she denied any history of toothache or dental problems beyond needing some crowns. However, Dr. Petty reportedly found only reddened gums upon oral inspection. The findings evidently made by an examining neuropsychiatrist that upset Ms. Seratt a great deal sometime prior to 09/01/2005 as reflected in Dr. Petty's records might shed additional light on her psychiatric status although I have not seen a copy of the report.

One also cannot exclude the potential adverse impacts of her medications on her memory, mentation, perception, energy level and antecedent psychiatric problems. For example, a review of her prescription record from Allcare Pharmacy for just June 17th of 2008 reveals that she was simultaneously taking five different agents that

can depress the central nervous system including opioid analgesic, hydrocodone; two different benzodiazepines, alprazolam and clonazepam, plus two different sedating agents with anticholinergic properties; the antihistamine, chlorpheniramine, and the muscle relaxer, orphenadrine. Apart from their separate contributions, these five agents can act in concert to produce supra-additive adverse effects on her brain function. Along with these five she was also taking two other agents specifically designed to alter neurotransmission in the brain. They include the selective serotonin reuptake inhibitor, citalopram, which has been associated with disturbed sleep, fatigue, impaired concentration and anxiety; and a monoamine oxidase inhibitor, selegiline, which patients have reportedly discontinued due to nausea, hallucinations, confusion, delusions and confusion among others.

In summary, within reasonable medical and toxicological certainty Ms. Seratt did not experience sufficient toxicity from carbon monoxide, if any, to expect her to have either persistent or delayed neurological consequences. Furthermore her continuing physical and neuropsychiatric woes have multiple other explanations unrelated to carbon monoxide and many obviously antedate June of 2005. None of the medical care that she has received since discharge from the emergency department on 06/08/2005 appears to have been necessitated by actual tissue injury from carbon monoxide. Finally, her need for any ongoing care is most likely driven by issues unrelated to carbon monoxide as discussed in the foregoing report.

The majority, by affirming the Administrative Law Judge opinion, has given Dr. Simmons' opinion little or no weight stating that his opinions ran contrary to the law of the case. I cannot agree. The respondents are entitled to controvert a case at any time, and the burden of proof is on the claimant. Dr. Simmons was requested to conduct a review of the claimant's medical records. Dr. Simmons did that review and rendered an opinion. The respondents are not arguing that any of the prior treatment was not reasonable and necessary and, in fact, have spent in excess of \$10,000 paying for the claimant's treatment. Dr. Simmons' opinion does not run afoul of the law of the case. What Dr. Simmons' opinion states is that the claimant is not entitled to any additional medical treatment. The treatment that she is receiving from Dr. Petty appears to be for things that are completely unrelated to her carbon monoxide exposure in 2005. I give significant weight to the opinion of Dr. Simmons. Dr. Simmons is one of the leading toxicology experts in the state of Arkansas and, in fact, is an expert in the field of carbon monoxide poisoning.

Simply put, when I consider the medical records from Dr. Petty and the opinion of Dr. Simmons, I cannot find that the claimant is entitled to any additional medical treatment after the date of her initial exposure. The respondents are not requesting

reimbursement for monies they have paid for the claimant. However, the respondents should not be responsible for reimbursing the claimant for treatment from Dr. Petty because Dr. Petty has treated her for conditions completely unrelated to her carbon monoxide exposure. The claimant has been treated for depression, anxiety, hypothyroidism, hormone imbalance, mood changes, fatigue, fibromyalgia and Myositis, which are conditions completely unrelated to the claimant's compensable injury.

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

KAREN H. MCKINNEY, Commissioner