

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508680

DARCY E. SPARKS,
EMPLOYEE

CLAIMANT

SALINE MEMORIAL HOSPITAL,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 3, 2011

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

Claimant represented by the HONORABLE TERENCE C. JENSEN,
Attorney at Law, Benton, Arkansas.

Respondent represented by the HONORABLE GUY ALTON WADE,
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 September 20, 2010. The administrative law judge found that the claimant proved she was entitled to a trial procedure to test whether an "internal pain pump" would be reasonably necessary. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's finding. The Full Commission

finds that the claimant failed to prove such a procedure was reasonably necessary in connection with the claimant's compensable injury.

I. HISTORY

The parties stipulated that the claimant, now age 51, sustained a compensable back injury on August 5, 2005. The claimant testified that she sustained an accidental injury to her lower back as the result of lifting a hospital patient. The claimant saw Dr. Evelyn Cathcart on August 10, 2005: "46-year-old paramedic at our hospital who was back to work after a back injury and was doing well for several weeks. Then she was lifting a patient on 8-8 and felt a pull in her back again in the same area of the lower right side of her back. It is radiating down the back of her right leg." Dr. Cathcart assessed "Lumbar strain that is probably a re-injury of her previous back injury." An MRI of the claimant's lumbar spine on August 22, 2005 showed "some multilevel degenerative change."

Dr. Cathcart referred the claimant to Dr. Thomas M. Hart, who performed L5 transforaminal injections on November 2, 2005 and November 17, 2005. Dr. Hart performed discography on November 30, 2005 and noted, "I do not think

any further interventional spine procedure would be of benefit. Again, she may have to get in some type of back strengthening or rehab program since she has already also failed physical therapy." Dr. Hart performed lumbar facet injections on December 8, 2005.

Dr. Edward H. Saer, III saw the claimant on January 3, 2006 and informed the respondent-carrier, "Her exam is relatively unremarkable and so are her x-rays and MRI. I think she probably had a lumbar strain. Because she has not done well with physical therapy and other measures, I would suggest that we get her in to see Dr. Sprinkle, who specializes in nonsurgical management, to see if there is something else that can be done."

Dr. Brent Sprinkle evaluated the claimant on January 10, 2006: "She is an EMT and was transferring a patient from bed to bed on June 7, 2005, and felt this pain. It got a little better and then she lifted a patient that fell next to a toilet on August 8, 2005, and got worse." Dr. Sprinkle's impression included lumbar degenerative disc disease and lumbar strain. Dr. Sprinkle provided conservative treatment and additional diagnostic testing.

Dr. Sprinkle performed trigger point injections on February 23, 2006, July 26, 2006, and September 13, 2006.

Dr. Christopher K. Mocek evaluated the claimant on March 22, 2007 and recommended surgery. The pre-operative diagnosis on May 11, 2007 was "1. Herniated disc L5-S1 left. 2. Lumbar radiculopathy. 3. Lumbar spine pain." Dr. Mocek performed a discectomy and decompression at L5-S1. The post-operative diagnosis was "Same with internal disc disruption, annular tear L5-S1 disc."

Dr. Mocek noted on May 21, 2007, "She has not really gotten any relief on her right side from the AAD. She says her left side never really hurt her." The claimant followed up in Dr. Mocek's clinic on June 19, 2007: "She is here today because the AAD did not help her pain....Her pain is on the right side. The pain today feels more like a pinching pain rather than spasm. The pain radiates down the right side of her leg to the calf." Dr. Mocek noted on July 16, 2007, "She had an AAD done in May and has not really noticed any significant pain difference."

The claimant began treating with Dr. Jason Tullis on September 10, 2007. Dr. Tullis noted on November 19, 2007, "She has a long standing history of back pain after a work

accident in 2005....Most recently she has had an IDET procedure done by Dr. Mocek. She is complaining of left leg pain which developed after the IDET procedure....A repeat MRI scan indicates that she may have a small disk at L5-S1 on the left side....I offered Ms. Sparks an L5-S1 diskectomy. I am not sure if this will be particularly useful for her. I have left decision up to her."

Dr. Philip R. Kravetz reported on February 19, 2008:

Patient is a 48-year-old female sent here through the worker's compensation carrier for independent medical evaluation. The patient is a 48-year old female involved in a work related injury back in 2005. All this has been previously well documented. Today's visit was not to determine whether or not the patient had a work injury, but whether at the present time the patient's treatment over the last 2.5 years has been reasonable and whether additional treatments are also reasonable. The patient has seen multiple doctors and has multiple diagnostic studies and treatments....The patient's workup has included initially an MRI examination that shows some degenerative change at L4-5 and L5-S1. There is a small disc protrusion at L5-S1 towards the left side, causing no obvious impingement. The patient's complaints have always been back pain and right much more than left leg radicular complaints. After nonsurgical care, workup then included a discography that was negative, and facet blocks that were negative. The patient was sent for a final workup and evaluation. Back at that time the patient was reportedly put at maximum medical improvement. The patient then was subsequently sent to a new pain management doctor, apparently because they were not satisfied that the patient truly was at maximum medical

improvement. Again, up to that time, the patient's workup included MRI examination, facet blocks, discogram, and EMG. All studies were negative other than showing some minimal degenerative change. The patient saw the new pain management doctor, who ultimately did both a percutaneous discectomy and an IDET type of procedure. Neither of these were successful. Indeed, according to the notes she had increased pain in her left leg after the IDET. With a completely negative discogram, both of these procedures would not have been indicated medically....The patient has subsequently had additional testing, including even a myelogram study. Again, the study failed to document any neural compression. The patient last was seen by Dr. Jason Tullis, neurosurgeon, in November. He had offered her a discectomy; however, in his exact words, he was not sure if this would be particularly useful for her, but was leaving the decision up to her.

The patient states that she has already switched jobs and does work at this time, but in a different job occupation. She does have symptoms that she would say are significant but not intolerable, probably 1-2 times a week. She does take medicine for this, although it apparently is not any kind of narcotic pain pills or muscle relaxers....

IMPRESSION:

Chronic back pain with right greater than left leg radiculitis.

At this time I had a very lengthy discussion with the patient. We went over the complete history as well as all the different diagnostic studies and treatment she has had. Really if we look at things, I think that when Dr. Sprinkle saw the patient and said that she was at maximum medical improvement, she truly was at maximum medical improvement. There really was not any good

indication based on diagnostic workup and results of treatments to have her see a new pain management doctor and have either the percutaneous discectomy or IDET. Indeed, we can see that both of those failed to improve her symptoms....

According to the official request, the questions ask whether or not this is a work related injury. That is not for me to determine today. Either the patient had all this determined to be a work related injury at that time or not. As far as her complaints, if these indeed appear to be the same complaints she's had all along, then I would certainly think it is related to the actual injury....

As far as being at maximum medical improvement, clearly the patient is and has been at maximum medical improvement....I certainly do not expect the patient to need any treatment in the foreseeable future.

The claimant followed up with Dr. Mocek on June 24, 2008: "She states that the pain has gotten worse, the pain is across her back and down her right leg. She states that the pain has got (sic) worse within the last 3 months." Dr. Mocek's assessment included lumbar spondylosis and lumbar radiculopathy. Dr. Mocek performed "facet joint nerve radio-frequency lesioning procedures" on August 4, 2008 and August 25, 2008. Dr. Mocek performed a "percutaneous lumbar myelogram" on November 17, 2008. Dr. Mocek's impression at that time was "Severe DDD L5/S1."

Dr. Mocek referred the claimant to Dr. Bernard Crowell. Dr. Crowell's impression on December 9, 2008 was "Herniated nucleus pulposus, lumbar spine, at L5-S1 with left side orientation." Dr. Crowell performed surgery on January 19, 2009: "Hemilaminectomy with diskectomy, neural foraminotomy, L5-S1 left." The pre- and post-operative diagnosis was "1. Herniated nucleus pulposus, L5-S1. 2. Degenerative disk disease, lumbar spine. 3. Back pain with radiculopathy."

The claimant testified that Dr. Crowell's surgery provided relief "on my lower left side. I got a little relief but it made the pain down my leg worse. It feels now like I have a pinching nerve." The claimant followed up with Dr. Mocek on May 21, 2009: "She was seen by Dr. Crowell and she underwent surgery in January of 2009. Her back pain is a lot better but the pain in the posterior distribution of the left leg is much worse. The MRI she had performed by Dr. Crowell post surgery in February shows that she developed scar tissue on the nerve. She states she has weaned herself on (sic) pain medication and does not want narcotic type meds at this point due to dependence....She continues to have pain in the left leg from the epidural fibrosis that is present since her surgery. We can give her

the SCS information to review. If she is interested she will need a psych evaluation prior to a SCS trial. If she were to get relief she would be referred to a neurosurgeon for implantation." It was noted in Dr. Mocek's clinic on June 18, 2009, "She is waiting on workers compensation for approval of SCS."

Dr. Mocek performed a procedure on September 8, 2009:

Percutaneous removal of two lumbar epidural single 8 electrode trial stimulator leads....
Ms. Sparks comes to the office today for this scheduled procedure. She continues to have significant intractable lumbar radicular symptoms. She reports no pain relief of the pain from the 3 day trial but good stimulation in both the back and legs. Optimum stimulation of her back and legs was achieved at the T9/10 level in combination with a L5 subcutaneous lead....
The patient will not be set-up with neuro-surgery for implant of a lamitrode stimulator. She will be given a DVD to review on a possible prialt pain pump trial and will return for an APN visit in 1 month to discuss it further.

Dr. Mocek's pre- and post-operative diagnosis on September 8, 2009 was "Post Laminectomy Syndrome Lumbar, Radiculopathy Lower Limb, Herniated Disc Lumbar, Degenerative Disc Disease Lumbar." The claimant followed up with Dr. Mocek on October 7, 2009: "She reports she is having more spasms down both legs. She recently had a SCS trial and did not get good results....Patient is discouraged

with chronic pain and her intolerance to pain medications. Due to her opioid intolerance discussed pain pump option with Prialt, we will schedule her for a Prialt trial."

The claimant followed up in Dr. Mocek's office on November 4, 2009: "Pt. is here today because she reports an increase in her back and leg pain symptoms. She is scheduled for a Prialt trial on November 16th. I discussed this medication with her, what her trial would involve, showed her a model of the pump, etc. She requests some sort of procedure to help her with her pain until her November 16th appt....Per Dr. Mocek, no procedure until the Prialt trial."

The record indicates that a Registered Nurse representing Systemedic Corporation corresponded with Dr. Mocek's office on December 16, 2009:

Further evaluation of your request for authorization of Pain Pump Trial on the above injured worker is necessary, before the review can be completed. Current clinical status and treatment plans were obtained from Cindy on 12/16/09.

Based on the information received, the review criteria for appropriateness of Lumbar Pain Pump Trial was not met. This case is therefore, according to standard utilization review procedures, being referred for specialty matched physician review for a peer level determination on this appropriateness of care issue. It is for the

purpose of allowing time for this review process that Arkansas Workers' Compensation Rule 30 requires preauthorization to be requested a minimum of three working days prior to scheduled submissions.

We anticipate completion of this review with notification to you of outcome by 12/17/09.

A pre-hearing order was filed on June 30, 2010. The claimant contended that "as the result of her compensable injury, her treating physician has advised the claimant to consider implementation of an internal pain pump. The claimant asserts that said physician has advised the claimant to undergo a trial procedure to test the efficacy of implantation of the internal device before determining whether the internal pain pump should be implanted. The claimant contends that the medical treatment recommended by her treating physician is reasonably necessary and should be approved." The respondents contended that they had paid all benefits to which the claimant was entitled and that the requested treatment was not reasonably necessary.

The parties agreed that "the sole issue to be presented for determination concerns the claimant's entitlement to additional medical treatment, specifically, a pain pump trial procedure recommended by the claimant's treating physician."

On July 12, 2010, Dr. Mocek answered a questionnaire prepared by the claimant's attorney on July 7, 2010. Dr. Mocek indicated that he had recommended "a pain pump trial procedure for the Claimant in order to determine whether the implementation of an internal pain pump may be effective in the treatment of her current condition and symptoms." Dr. Mocek wrote on the questionnaire, "Two test doses with a medication named Prialt. If patient gets 50% pain relief or more with no side effects, she may be a candidate for a pain pump with Prialt." Dr. Mocek indicated that he believed the claimant's current symptoms and pain were related to the August 5, 2005 compensable injury. Dr. Mocek indicated that the recommended "pain pump trial" was reasonably necessary medical care.

A hearing was held on August 9, 2010. The claimant testified that she had experienced only temporary benefit from the injection treatments she had received following the compensable injury. The claimant testified that she was limited in sitting, standing, and walking, and that use of a TENS unit provided very limited relief. The claimant testified regarding the "pain pump trial," "I'd like to try

it just to see if I could get any relief, if it would be possible.”

An administrative law judge filed an opinion on September 20, 2010. The administrative law judge found, among other things, that the claimant proved she was “entitled to a trial procedure to test whether the installation of an internal pain pump would be reasonably necessary medical treatment for her claim.” 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 claimant must prove by a preponderance of the evidence that she is entitled to additional benefits. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

An administrative law judge found in the present matter, “3. The claimant has proven, by a preponderance of

the evidence, that she is entitled to a trial procedure to test whether the installation of an internal pain pump would be reasonably necessary treatment for her claim. This finding is limited to the approval of a trial procedure and is not authorization to implant an internal pain pump which will require further development of the medical evidence, as well as a preauthorization at the physician-level review." The respondents argue on appeal that the procedure requested by Dr. Mocek "did not meet pre-certification as required by Commission Rule 30." Nevertheless, Commission Rule 30 is not relevant to determining whether or not requested medical treatment is reasonably necessary. Rule 30 is simply a comprehensive measure with extensive provisions regarding proper procedure for payment of medical costs. *Cyphers v. United Parcel Serv.*, 68 Ark. App. 62, 3 S.W.3d 698 (1999), citing *Burlington Indus. v. Pickett*, 336 Ark. 515, 988 S.W.2d 3 (1999).

In any event, the Full Commission finds that the instant claimant did not prove by a preponderance of the evidence that she was entitled to a trial procedure for implementation of an "internal pain pump." The parties stipulated that the claimant sustained a compensable injury

to her back on August 5, 2005, which injury Dr. Cathcart, Dr. Saer, and Dr. Sprinkle diagnosed as a lumbar strain. The claimant underwent injection therapy by Dr. Hart who noted in November 2005, "I do not think any further interventional spine procedure would be of benefit." The claimant also underwent injection therapy with Dr. Sprinkle through September 2006.

The claimant began treating with Dr. Mocek in March 2007, but the preponderance of the evidence does not demonstrate that the claimant has benefitted from any of Dr. Mocek's treatment. Dr. Mocek performed a lumbar discectomy and decompression on May 11, 2007. Dr. Mocek subsequently noted that the claimant had received no relief and that surgery had not helped the claimant. Dr. Tullis reported in November 2007 that an IDET procedure performed by Dr. Mocek had actually caused additional symptoms for the claimant in the form of left leg pain.

Dr. Kravetz independently evaluated the claimant on February 19, 2008 and correctly noted that none of the treatment previously provided for the claimant had alleviated any of her symptoms. Dr. Kravetz stated, "I certainly do not expect the patient to need any treatment in

the foreseeable future." The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In the present matter, the Full Commission finds that the opinion of Dr. Kravetz is supported by the evidence and is entitled to significant probative weight. The claimant followed up with Dr. Mocek in June 2008 and stated that her pain continued to worsen. Dr. Mocek subsequently performed "lesioning procedures" and a "percutaneous lumbar myelogram." The claimant then underwent another surgery to her lumbar spine, performed by Dr. Crowell in December 2008. The claimant's testimony indicated that Dr. Crowell's surgery provided relief on the lower left side of her back but increased the claimant's left leg pain: "It feels now like I have a pinching nerve."

Dr. Mocek noted in May 2009 that the claimant's left leg pain continued to worsen. Dr. Mocek planned an SCS (spinal cord stimulator) trial. Dr. Mocek reported in September 2009 that although the claimant had experienced "good stimulation" in her back and legs, she reported "no pain relief." Dr. Mocek noted in October 2009, "She

recently had a SCS trial and did not get good results." Dr. Mocek then recommended a "pain pump option with Prialt." Dr. Mocek essentially opined on a form provided by the claimant's attorney in July 2010 that "a pain pump trial" would effectively treat the claimant's condition and symptoms, and that such a procedure was "reasonably necessary medical care." Yet, the evidence before the Commission does not demonstrate that the claimant has experienced any true lasting relief from Dr. Mocek's treatment and that the claimant's physical condition has in fact worsened as the result of two surgeries and the procedures performed by Dr. Mocek. The claimant testified at hearing that she experienced difficulty sitting, standing, and walking. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the record does not demonstrate that Dr. Mocek's "pain pump trial" would be reasonably necessary in connection with the claimant's compensable lumbar strain which she suffered in August 2005. There is no evidence before the Commission showing that the latest treatment

proposed by Dr. Mocek will be any more successful than the earlier ineffective treatment which he has provided.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she was entitled to a "pain pump trial" as recommended by Dr. Mocek. The evidence does not demonstrate that such a procedure is reasonably necessary in connection with the claimant's compensable injury. We therefore reverse the administrative law judge's finding that the claimant proved she was entitled to "a trial procedure to test whether the installation of an internal pain pump would be reasonably necessary for her claim."

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After my de novo review of the entire record, I must respectfully dissent from the majority opinion, because I agree with the Administrative Law Judge's opinion that the

claimant is entitled to a pain pump trial procedure recommended by the claimant's authorized treating physician, Dr. Mocek.

As the Administrative Law Judge observed, the respondent-carrier denied the pain pump trial, because it did not meet the precertification requirements. However, the preauthorization review documents in evidence show that the requirements of a "registered nurse level review" were met, with the following qualification: "Alert! This outcome at the RN level of review indicates the need for physician level review and opinion, as recommended below, and *should not be used by any party as a basis for denying treatment on the issue of medical appropriateness.*" [emphasis in original.] Peer review or a second surgical opinion were recommended, but the only evidence that one was performed was the testimony of the respondent-carrier's adjustor. It is incredible that a physician review was conducted, but no report was generated. Likewise, it is incredible that the adjustor received an email that the results of the review were that the trial was not reasonable and necessary, but the email was not entered into evidence. Furthermore, the adjustor in this claim was unaware, despite the repeated

notations throughout the medical records, that the claimant was allergic to the pain medications which are the mainstay of pharmaceutical back pain control.

The claimant continued to have pain which affected her ability to work and engage in activities of daily living. The claimant did not have the benefit of the use of strong pain medication due to allergic reactions and used Aleve to manage her significant pain. Contrary to Dr. Kravetz's opinion that the claimant needed no further treatment, Dr. Crowell found that the claimant required a hemilaminectomy with discectomy, which he performed in January 2009, which improved her back pain if not her leg pain, and Dr. Mocek found that there were further pain management procedures to explore. The Prialt pain pump trial was recommended as a way to address her pain in light of her allergies.

I find that the recommended trial is reasonable and necessary medical treatment of the claimant's continued pain which is a result of her original injury, especially in light of the haphazard approach of the respondent to this claim, as evidenced by the adjustor's lack of familiarity

with a factor as important as the claimant's allergy to the main pain medications used in cases of back pain.

For the foregoing reasons, I must respectfully dissent from the majority opinion. I would award the trial.

PHILIP A. HOOD, Commissioner