

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G001273

KEVIN STOUT, EMPLOYEE	CLAIMANT
RED APPLE ENTERPRISES, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE CO., CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 19, 2011

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

Claimant represented by the HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, 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 June 20, 2011.

The Administrative Law Judge entered 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 not proven by a preponderance of the evidence that he is entitled to additional medical

treatment in the form of physical therapy by Dr. Robert McCarron because Dr. McCarron is not an authorized treating physician of Claimant.

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.

In affirming and adopting the findings of the Administrative Law Judge, we specifically find that A.C.A. §11-9-514(f) does not apply to the instant claim. It is undisputed that the compensability of the claimant's injury was not controverted by the respondents, and the claimant did not request medical assistance in writing prior to seeking unauthorized medical treatment with Dr. McCarron. See Lepel v. St. Vincent Health Serv., 96 Ark. App. 330, 241 S.W.3d 784 (2006); Redmond v. St. Joseph's Mercy Health Center, Full Commission Opinion filed April 27, 2011 (F805104).

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**

After a de novo review of the record, I disagree with the majority. First, as the claim was controverted, forcing the claimant to seek treatment on his own, the change of physician rules did not apply. Second, even if the treatment already provided to the claimant by Dr. Robert McCarron was unauthorized, this does not relieve the respondents of their burden to provide further reasonably necessary medical treatment.

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). Furthermore, this Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. See Maynard v. Belden Wire & Cable Company, Full Workers' Compensation Commission Opinion filed April 28, 1998 (E502002); See also Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission opinion filed June 20, 1991 (Claim No. 704562). Additionally, a claimant does not have to provide objective medical evidence of his continued need for treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000), citing Chamber Door Indus., Inc. v. Graham, 59 Ark. App. 224, 956 S.W. 2d 196 (1997).

Here, the claimant fell and hurt his hip at work.

Respondents initially paid benefits until May 13, 2010, when Dr.

Lowry Barnes declared that claimant was in no need of more treatment except for a hip replacement. Dr. Barnes said the hip replacement was required due to pre-existing Perthes disease.

Claimant wished to defer surgery and keep on working. He testified that he had not had problems with the hip before the fall. Dr. McCarron outlined a course of physical therapy and other treatment to allow the claimant to continue working. Claimant saw Dr. McCarron on October 18, 2010, over 5 months after respondents last agreed to pay any benefits on the claim.

Ark. Code Ann. §11-9-514(f) provides that the change of physicians rules do not apply where a claim has been controverted. Respondents can't have it both ways. Clearly, they do not wish to pay for any more treatment with Dr. Barnes, as he says the treatment he recommended (hip replacement) was for a pre-existing condition. As of May 13, 2010, respondents had no intention of paying further benefits. The claimant asked for additional medical treatment and was denied. The change of physician rules simply do not apply here, and the majority, affirming and adopting the Administrative Law Judge, has erred in finding that they do.

Furthermore, the respondents are still responsible for additional reasonably necessary medical treatment. I would note that the claimant is only asking for physical therapy, when he could be asking for the hip replacement. With an aggravation

injury, the major cause requirement is satisfied where a compensable injury aggravates an asymptomatic pre-existing condition such that the condition becomes symptomatic and requires treatment. Pollard v. Meridian Aggregates, 88 Ark. App. 1, 193 S.W. 3d 738. The compensable injury need only be a factor in the need for treatment. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W. 3d 383 (2004). If the hip replacement recommended by Dr. Barnes is reasonably necessary medical treatment, then surely physical therapy prescribed to postpone the hip replacement is reasonably necessary medical treatment as well. I would award the physical therapy requested by the claimant, even though it was recommended by a non-respondent selected physician. If the respondents are unwilling to provide this treatment, it is further proof that this claim has been controverted. If this claim is truly not controverted, the respondents have a burden of sending the claimant either back to Dr. Barnes for the hip replacement, or to another doctor for further additional reasonably necessary medical treatment, which will probably be the physical therapy already recommended by Dr. McCarron.

For the aforementioned reasons, I must respectfully dissent.

---

PHILIP A. HOOD, Commissioner