

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601643

CASSANDRA (RICHARDS) WILSON, EMPLOYEE	CLAIMANT
ST. EDWARDS MERCY MEDICAL CENTER, EMPLOYER	RESPONDENT
SISTERS OF MERCY HEALTH SYSTEM, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 8, 2011

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

Claimant represented by the HONORABLE J. RANDOLPH SHOCK,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE RANDY MURPHY,
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 November 18, 2010.
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 of this
claim.

2. On January 26, 2006, the relationship of employee-self insured employer existed between the parties.
3. On January 26, 2006, the claimant sustained a compensable injury to her back or lumbar spine.
4. The evaluation of the claimant by a spinal or back specialist, as recommended by Dr. Miller, represents reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents would be liable for the expense of these services, subject to the medical fee schedule.
5. An appropriate provider of this evaluation, as also recommended by Dr. Miller, would be the Oklahoma Spine and Brain Institute, so long as this facility agrees to abide by the medical cost containment rules adopted by this Commission, including the medical fee schedule. However, if the Oklahoma Spine and Brain Institute refuses to abide by these rules, another expert medical provider of these services will be selected by this Commission.
6. The continued conservative treatment of the claimant's chronic lumbar spine, through the use of oral medications, also constitutes reasonably necessary medical services, for the claimant's compensable injury under Ark. Code. Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are also liable for the expense of these medical services. At the present time, these medical services appear to be provided by (sic) the claimant by and at the direction of Dr. Nelson Onaro. It would appear that Dr. Onaro is an appropriate provider of these services. However, the respondents' liability for

these services is subject to the medical fee schedule.

7. The respondents have controverted the claimant's entitlement to an evaluation by a spinal or back specialist, as recommended by Dr. Miller.
8. As no controverted benefits have herein been awarded to the claimant, no controverted attorney's fee can be awarded to her attorney.

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 November 18, 2010, 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 is 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.

In my opinion, a review of the medial records support a conclusion that the claimant's pre-existing degenerative condition is the cause of her current condition and need for treatment. Dr. Miller, the physician who recommended the medical services at issue, only treated the claimant on one occasion when Dr. Swicegood, the claimant's treating physician was unavailable. Dr. Swicegood provided the claimant with treatment over an extended period and is more familiar with the claimant's condition and treatment. Dr. Swicegood has not recommended surgery for the claimant and he did not think surgery was advisable. Therefore, the evidence demonstrates that the claimant is not entitled to a neurosurgical evaluation at the Oklahoma Spine and Brain Institute. Accordingly, I find that the claimant has failed by a preponderance of the evidence that she is entitled to additional medical treatment.

Therefore, after conducting a de novo of the record, I find that the claimant has failed to meet her burden of proof. Accordingly, for all the reasons set

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forth herein, I respectfully dissent from the majority's
award of benefits.

KAREN H. MCKINNEY, Commissioner