

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611493

TERESA BERNARD, EMPLOYEE	CLAIMANT
CITY OF BRYANT, EMPLOYER	RESPONDENT NO. 1
MUNICIPAL LEAGUE WORKERS' COMPENSATION PROGRAM, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH AND PERMANENT DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JULY 19, 2021

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his participation in the hearing.

STATEMENT OF THE CASE

On April 29, 2021, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A Prehearing Telephone Conference was conducted on January 13, 2021, from which a Prehearing Order was filed on that same date. The Prehearing Order has been marked as Commission's Exhibit #1 and made a part of the record.

Stipulations

During the Prehearing Telephone Conference, or at the start of the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within Claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times,

including on or about September 17, 2005, at which time the Claimant sustained a compensable injury to her lower back.

3. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
4. This claim for additional benefits has been controverted by Respondents No. 1.

Issue(s)

The parties agreed to litigate the following issue: Whether the Claimant is entitled to cease treating with Dr. Carlos Roman and to resume medical treatment with Dr. Kenneth Barngrover.

Contentions

The parties' respective contentions are as outlined below:

Claimant:

Claimant contends that admitted compensable injuries were sustained 9/7/05. Claimant lives in Georgia and her authorized principle treating physician was Dr. Kenneth Barngrover. Respondents changed the Claimant's treatment to Dr. Ramon[sic] in Little Rock, AR. Claimant wishes to return to the care of her previously authorized treating physician, Dr. Barngrover, in Georgia.

Claimant reserves the right to pursue other benefits to which Claimant may become entitled in the future.

Claimant's attorney respectfully requests that any attorney's fees owed by Claimant on controverted benefits paid by award or otherwise be deducted from Claimant's benefits and paid directly to Claimant's attorney by separate check, and that any Commission Order direct the respondent (carrier/TPA) to make payment of attorney's fees in this manner.

Respondents No. 1:

Respondents contend that all appropriate benefits have been and are continuing to be paid with regard to this matter. Respondents contend the recommendation for medical treatment from Dr. Carlos Roman are all that are reasonable and necessary with regard to this matter. Respondents do not object to the Claimant treating with Dr. Barngrover in Georgia so long as he adheres to the recommendations made by Dr. Roman. It is Respondents' position that those recommendations are all that are reasonable and necessary with regard to this matter.

Respondent No. 2:

The Trust Fund has deferred to the outcome of litigation.

Summary of Evidence

The record consists of the hearing transcript of April 29, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 includes the Commission's Amended Prehearing Order of January 13, 2021, and the parties' respective response to the Prehearing Questionnaire. The Claimant offered into evidence a Claimant's Documentary Evidence Exhibit #1, consisting of forty-nine (49) pages, which has been marked as Claimant's Exhibit #1. Respondents No. 1 offered into evidence sixty-four (64) pages of Respondents' Hearing Exhibit. These have been marked as Respondents' Exhibit # 1.

Following the hearing, Respondents No. 1 offered additional medical evidence, namely, a Clinic Note that was authored by Dr. Carlos Roman on June 1, 2021. The Claimant's attorney does not object to this medical report being made a part of the record. Therefore, this additional evidence along with the various e-mail exchanges have been blue-backed and are incorporated into the hearing transcript of April 29, 2021.

Witnesses

Mr. Ricky Allen Shaw, the Claimant's husband, and Mrs. Teresa Bernard, the Claimant, were the only witnesses during the hearing.

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant proved by a preponderance of the evidence that additional medical treatment under the care of Dr. Barngrover is reasonably necessary for treatment of compensable back injury of September 17, 2005.

TESTIMONY

Ricky Allen Shaw testified that he currently lives in Talbotton, Georgia. According to Mr. Shaw, he has been married to the Claimant for seventeen (17) years. Mr. Shaw is employed as a maintenance technician at Freudenberg-NOK, which is located in LaGrange, Georgia. He has been with the company for five (5) years. Mr. Shaw works the night shift. According to Mr. Shaw, he has the opportunity to observe his wife's activities every day. He testified that they moved to Georgia in 2015. Prior to that, they lived in Arkansas and Southwest Missouri.

With respect to the Claimant's treatment with Dr. Barngrover as opposed to Dr. Roman, Mr. Shaw explained:

A Well, with Dr. Barngrover she was able to not completely function but do a little bit around the house. In other words, she was able to do a little bit of sweeping. Not a lot because she can't hardly get over, bend over, or anything like that. I do the laundry. I do the dishes. She will cook occasionally. With Dr. Roman, I have done it all.

Q All of those things you just mentioned?

A All the things that I just --

Q These were things that --

A The sweeping.

Q Okay.

A Because she has a harder time getting out of bed just to go to the bathroom and there's times that I've had to get her up out of bed.

Q Getting her up out of bed is a pretty good indication that she's having a problem to you; right?

A Yes, sir.

In addition to the Claimant's verbal complaints, Mr. Shaw testified that he has observed the Claimant having a hard time getting comfortable, and she has to change positions all the time. He testified that the Claimant is most comfortable in bed. According to Mr. Shaw, the Claimant stays in bed eighty-five (85) percent of the time.

Mr. Shaw testified that Dr. Roman almost killed his wife. Under further questioning, Mr. Shaw explained: "He [Dr. Roman] did not give her anything to wean her off opiates." According to Mr. Shaw, Dr. Roman just cut her off and said she would not be getting any more. Mr. Shaw testified that in order to get the Claimant out of bed to walk her to the bathroom or down the hallway, he has to hold her. He confirmed that this is what was going on with the Claimant during the period of time she was being seen by Dr. Roman.

According to Mr. Shaw, it took eleven (11) hours for them to drive from Georgia to Arkansas for the hearing because the Claimant had to stop and walk around. Mr. Shaw confirmed that he has to help the Claimant get out of the car on most occasions. However, Mr. Shaw testified that when the Claimant was treating with Barngrover, he did not have to help her out of the car.

Mr. Shaw further testified that the Claimant was able to help him around the house more, when she was seeing Dr. Barngrover.

Teresa Marie Bernard, now sixty (60) years of age, testified during the hearing. She confirmed that they live two hours north of Atlanta, which is near the Alabama border.

It appears that the Claimant has sustained two back injuries. The Claimant confirmed that she resided in Arkansas when she injured her back. At the time she got hurt, she was working for Bryant Animal Patrol. She worked as an animal patrol officer. She gave an overview of her first back injury. (Tr 18) Her second injury occurred on September 17, 2005. That injury is at issue in this claim. According to the Claimant, she injured her back while giving shots to a dog to get it ready for surgery. The Claimant gave a brief description of the incident. (TR 19)

With respect to medical treatment for her back injury, the Claimant testified that instead of doing surgery again, her treating physicians decided to put her on opiates, physical therapy, and shots. This treatment was performed for approximately one year. The Claimant eventually underwent back surgery by Dr. Zachary Mason. She confirmed that on November 15, 2006, Dr. Mason assessed her with a twelve (12) percent impairment rating.

She agreed that Dr. Mason sent her to Dr. Qureshi, a pain specialist, in Arkansas. The Claimant confirmed that her treatment with Dr. Qureshi dates back to 2014. According to the Claimant, her treatment with Dr. Barngrover began around November of 2015. The Claimant testified that she treated for about a year and a half with Dr. Barngrover, which was until the insurance carrier wanted her seen by Dr. Roman.

The Claimant confirmed that she was accepted by the insurance carrier as being permanently and totally disabled. She continues to receive workers' compensation disability benefits.

Regarding the Claimant's treatment with Dr. Barngrover, she explained: "Well, he got me on Demerol, some inflammation medicine, pain patch, and a spinal cord stimulator, and they stopped manufacturing Demerol; so we were trying to find another one to put me on when all this went down."

She agreed that she was getting better with Dr. Barngrover's medical care. The Claimant testified that she could be half a human being under Barngrover's care. Per the Claimant, she was actually able to get up and walk. She admitted to seeing Dr. Roman twice, for face-to-face appointments. However, the Claimant began having Zoom conferences with Dr. Roman when the pandemic struck. The Claimant testified that Dr. Roman wanted to take her off everything that Dr. Barngrover had her on and put her on hydrocodone.

The Claimant admitted that she had to fly to Little Rock for her visits with Roman. She denied seeing Dr. Roman within the last six months. According to the Claimant, the last time they did a telemedicine conference, a different doctor from Dr. Roman's office conducted the telemedicine visit. She denied being able to see Dr. Barngrover or communicate with his office since her last communication with Dr. Roman's office.

Under further questioning, the Claimant testified:

Q But what I really want to ask you about is what is the difference between the way that you have felt under Dr. Barngrover's treatment as opposed to the way you felt under Dr. Roman's treatment?

A I – like I said, I could be half a human being at least under Barngrover and doing a lit bit of stuff, but with Roman I can't do anything. I am like an imbuelant (phonetic).

Q And when you say half a human being and you can do stuff, what kind of things could you do?

A I could walk out to the barn and pet my horses. I could sweep. Even if it took me two or three days I could do it. My husband would do the laundry and bring me to fold it on the bed, and I was able to work in my garden. Just little things. Not very -- you know, I couldn't go riding my horse or anything –

Q Okay.

A -- but I felt halfway human again.

Q Okay. Was your attitude better --

A Oh, yeah.

Q Under Dr. Barngrover --

A Oh, yeah.

Q -- as opposed to Dr. Roman?

A I'm depressed and anxiety. They've given me medicine for it now.

The Claimant confirmed that she has refills of the medication from Dr. Roman that she currently relies upon as of the date of the hearing. However, the Claimant testified that she has half a bottle or more left on the prescription that she had refilled on the 19th (of April). She denied having any left-over prescriptions from Dr. Barngrover because she has not seen him in a while.

On cross-examination, the Claimant confirmed that her deposition was taken in July 2020. She agreed that about five (5) years after her injury, she moved to Missouri. During the years that the Claimant lived in Missouri, she treated with Dr. Qureshi. The Claimant confirmed that a spinal cord stimulator was implanted in her back in August of 2007. As of the date of the hearing, this device is still in the Claimant's back. However, the Claimant stated that it does not work, and it never really worked.

Regarding the Claimant's treatment with Dr. Barngrover, she admitted that in addition to the Demerol, he treated her with a Lidoderm patch at one point, but she is currently off of it. She has been treated with the fentanyl patches, and radiofrequency ablation a few times. According to the Claimant, this treatment modality did not help at all. The Claimant confirmed that she has

been on Medicare since 2007. However, she agreed that all the treatment for her back has been paid for by the workers' compensation carrier.

The Claimant verified that Dr. Roman has her going to a clinic in Georgia to do the urine drug screens. She verified that her last video telemedicine conference with Dr. Roman was on December 15, 2020. The Claimant admitted to talking via telephone with one of Dr. Roman's associate, Dr. Becker, on March 19, 2021.

Under further questioning, the Claimant confirmed that in January of 2020, she had a discussion with Dr. Roman about benzodiazepine because it showed up on her drug screen. She admitted that Dr. Roman did not prescribe this medication. According to the Claimant, she was not able to sleep or do anything, so her friend asked her to try it. The Claimant went on to explain that when you are in so much pain and not able to sleep, you will try whatever you can get.

The Claimant's first visit with Dr. Roman occurred on October 21, 2019. At that time, Dr. Roman reported that the Claimant was living in Georgia and undergoing an opiate reduction. She admitted to telling Dr. Roman, she was very comfortable with undergoing the reduction.

Specifically, the Claimant explained:

A Well, yes, he was taking me off the patch. He was taking me off the – you know, we were trying to find something to take the place of the drug that they no longer manufactured. Y'all wanted me to stop taking everything I was taking from him, so we were slowly taking stuff away.

On redirect-examination, the Claimant confirmed that Dr. Roman did not offer to make any repairs, corrections, or alterations to her spinal cord stimulator. She denied that he offered to substitute or supplement her spinal cord stimulator with a pain pump. The Claimant further denied that Dr. Roman offered to perform any of the radiofrequency ablations, which had been previously performed. She further denied that Dr. Roman offered her any surgery, physical therapy, epidural steroid injections, or spinal injections.

MEDICAL EVIDENCE

On November 15, 2006, Dr. Zachary Mason authored a Chart Note. At that time, the Claimant was feeling some discomfort and had swelling in the incision site. The Claimant still had complaints of “hurting in her left buttock and down to her leg.” Dr. Mason noted that the Claimant underwent a new MRI, which he reviewed. According to this medical documentation, Dr. Mason stated that the Claimant looked very good postoperatively and showed no signs of infection, recurrent disc herniation, or discitis. Dr. Mason wrote:

I do not really recommend my further treatment at this time other than observation. For MMI, I have given her an impairment rating to the body as a whole of 12% and instructed her to talk to with her Workmen’s [sic] Compensation case manager/adjuster for plan of care as she has been terminated from her employment.

The Claimant underwent a Functional Capacity Evaluation (FCE), on June 28, 2007. The Evaluator determined the results of this evaluation showed that the Claimant gave an unreliable effort, with 40 of 55 consistency measures within expected limits. Her overall work status was measured to at the Sedentary classification of work when considering a normal workday.

Dr. Amir M. Qureshi evaluated the Claimant on November 10, 2008, for a follow-up visit for complaints of back pain due to her compensable injury. The Claimant was status post for spinal stimulator implantation. However, the Claimant continued to have pain across her lower back. The Claimant indicated that when she used the spinal cord stimulator approximately one to two hours at a time and was getting good relief from the pain in her legs. However, the Claimant reported that any type of activity caused her leg pain to increase. The Claimant was also having problems sleeping. Dr. Qureshi’s impression was “1. Status-post a lumbar spinal cord stimulator implant. 2. Low back pain,” for which he prescribed a medication regimen.

On January 7, 2009, the Claimant saw Dr. Qureshi for another follow-up visit. This Clinic Note shows that the Claimant was experiencing more pain in her mid-thoracic and lumbar areas,

along with problems sleeping. His impression was “1. Status post a spinal cord stimulator implant. 2. Failed back surgery syndrome.”

Ken Martin, a Doctor of Pharmacy and Registered Pharmacist, made the final recommendation for the Claimant’s medications on November 20, 2018. These have been reviewed.

On February 14, 2019, the Claimant underwent a detailed and comprehensive examination by Dr. Kenneth Barngrover. According to these notes, Dr. Barngrover re-evaluated the Claimant for her chronic low back pain complaints. Pursuant to this exam, Dr. Barngrover opined that Claimant had mild to moderate pain levels in her lower back due to a work-related injury Dr. Barngrover assessed the Claimant with: “1. Lumbar neuritis. 2. Fusion of spine, Lumbar region.” At that time, he prescribed a medication regimen which included an Gralise, Restoril, Seroquel, Celebrex, Duragesic, Lidoderm, and Meperidine. The Claimant underwent a urine screen, which was periodically done as standard care for chronic pain management patients.

Dr. Barngrover saw the Claimant for a follow-up visit on March 14, 2019. He performed a detailed exam of the Claimant. At that time, Barngrover again noted that the Claimant had mild pain levels in the lower back due to her work-related injury. He assessed the Claimant with: “1. Lumbar neuritis. 2. Fusion of spine, lumbar spine.” Dr. Barngrover noted that the current combination of medications remained helpful with no side effects. As a result, Dr. Barngrover continued the Claimant’s medication combination and recommended injection therapy. However, the Claimant deferred this therapy at that time. It appears that on that same date, the Claimant underwent a normal drug screen.

On May 15, 2019, the Claimant returned to Dr. Barngrover for re-evaluation of her chronic complaints of pain. She presented with mild to moderate levels of low back pain. At that time,

the Claimant reported to Dr. Barngrover that she was having an average month managing her pain. Dr. Barngrover stated that the Claimant's current combination of pain management medications remained helpful with no side effects, which he continued.

The Claimant had a normal drug screen on July 11, 2019.

When the Claimant returned to Dr. Barngrover on August 9, 2019, for follow-up care of her chronic back pain due to her work-related injury, she presented with mild to moderate pain levels. The Claimant reported having a bad past month managing her pain. Her pain level by numeric rating scale was valued at a nine (9), without pain medication. However, the Claimant's pain level with her current medication regimen was estimated to be around an eight (8). At that time, Dr. Barngrover noted that Demerol was not available. Therefore, he gave the Claimant a trial of Oxycodone.

On September 10, 2019, the Claimant presented to Dr. Barngrover and was accompanied by her husband and case manager for re-evaluation of her chronic pain complaints. At that time, the Claimant presented with moderate to high pain levels. The Claimant reported having a bad past month managing her pain levels. She further reported to Dr. Barngrover that her pain level was valued at a ten (10) both with and without pain medication. It appears that the Claimant's elevated pain levels continue due to her inability to get Demerol from her pharmacy. Therefore, Dr. Barngrover held the Oxycodone and gave the Claimant a trial of Hydromorphone.

On October 8, 2019, the Claimant saw Dr. Barngrover for a re-evaluation of her chronic low back pain. Again, the Claimant presented with moderate to high left of lower back pain, along with a reported bad past month managing her pain levels. Therefore, Dr. Barngrover held the hydromorphone because it was not effective. Instead, Dr. Barngrover started the Claimant on a trial of Nucynta and Oxymorphone. However, he held the Lidoderm patch. A drug screen was

performed, which was normal. At that time, the Claimant signed a pain medication management contract. She was directed not to share her medication with anyone. The Claimant was also directed not to take any medications not prescribed to her and that she could only receive medication from Dr. Barngrover's office. He assessed the Claimant with "1. Lumbar neuritis. 2. Long term use of other medication (current Use of Opiate Analgesic). 2. Fusion of spine, Lumbar region."

The Claimant underwent an Independent Medical Evaluation (IME), by Dr. Carlos Roman on October 21, 2019. At that time, Dr. Roman stated that he had performed an extensive consultation going over the Claimant's medications. From a procedural standpoint, Dr. Roman did not recommend any procedures. His stated reason was that the Claimant had undergone a host of different procedures, injections, surgeries, and she does not need any further procedures. Dr. Roman made additional recommendations. Specifically, he wrote:

... I asked her again about the spinal cord stimulator. It really does not look like that was much of a game changer for her, as far as pain management. I am not sure that it was necessary that it was revised and given the fact that it has not made much of an impact in her overall pain management from the beginning, it probably was not necessary." It surely has not curtailed any of her opiate use or polypharmacy.

The gabapentin, particularly in the form of Gralise, the sustained release, we are going to challenge that for sure, the memory problems that arises whether it is still necessary. We are just going to switch her over to regular gabapentin, at a 400 mg tablet up to three times a day, and she is going to work on taking it twice a day, possibly could increase to a third tablet during the day if necessary. The Restoril and temazepam will be discontinued, as well as the baclofen. We will use tizanidine 4 mg tablets, dispense of 60, two of those in the evening as a sleep aid and muscle relaxant, also to attenuate some opiate withdrawal. She has already been tapered down to a 25-mcg patch. She will maintain with that into November. In November, we will convert strictly over to hydrocodone at a 10 mg tablet, dispense 150, so she will be on five a day with p.r.n. use, so we are going to try to get her to work on dishabituation strategies, not to use it in the same scheduled fashion. I gave her two prescriptions for that to try to get her a two-month interval on prescriptions, three-month total. She lives in Georgia and does not have to travel back and forth, so may have to confer with her over the phone for some of the medications she is currently taking. I am going to put her on some BuSpar 10 mg tablets p.o.b.i.d. to try to attenuate some of the anxiety very commonly associated with tapering off of opiates.

We explained to her the physiology aspects of opiate dependency. The goal here is to get her out of a strong dependency stay and address the polypharmacy. I would think it would be a good goal to have her down to 90 or under the hydrocodone 10 mg. to have her challenge off the gabapentin, particularly as it pertains to using a sustained release, the Gralise formulation. The muscle relaxer, again, will just be with the tizanidine. She does take Fioricet as well, but that is for headaches, and should not be related to her work injury.

Per an ADDENDUM, dated October 21, 2019, Dr. Roman reported that he previously saw the Claimant for an IME and had performed a drug screen. Dr. Roman stated that at that time, the POCT test did not register oxycodone. The results of additional testing demonstrated only Gabapentin. However, Dr. Roman found it peculiar that the drug screen did not reveal the fentanyl. As a result, he found the drug reports to be a little bit conflicting. He also went on to note that he made actual clinical documentation and visibly observed the fentanyl patch on the Claimant. Dr. Roman specifically stated that he would have assumed that there was just drug diversion had he not visibly observed the fentanyl patch on the Claimant.

On January 6, 2020, Dr. Roman saw the Claimant for a follow-up visit. At that time, the Claimant complained of continued chronic low back pain. Dr. Roman noted that a drug screen showed that the Claimant had tested positive for benzodiazepines, but no opiates. However, Dr. Roman stated that he had not prescribed the Claimant any benzodiazepines. Dr. Roman expressed concern for the Claimant having an accidental overdose from the use of high-dose opiates. Roman wrote:

MEDICATIONS:

Medication prescribed today, tizanidine 4 mg tablets, #60; Zofran is discontinued; BuSpar she says is not very helpful, so we will discontinue that; gabapentin 300 mg. dispense #90; Norco 10 mg tablets, we are going to go to #130, then #120, then #110. I do have some concerns about possibly even drug diversion. I am going to give her the benefit of the doubt at this time. We will continue to work with her aggressively to bring her overall opiate use down. She was requesting benzodiazepines, which we will not prescribe. She, again had the aberrant screen, and we are not going to put her on any combinations that would heighten overdose risk. She will have to use tizanidine and continue to work on p.r.n. use of medications. Extensive consultation today.

REVIEW OF SYSTEMS:

No change in her medical health systems.

FINAL DIAGNOSES:

1. She has chronic low back pain.
2. Lumbar radiculopathy, chronic.
3. Left lumbar, disc disease.
4. Left lumbar fusion, L5-S1.
5. Opiate dependency.
6. Long-term use of an opiate agent.
7. Lumbar spondylosis.
8. Opiate misuse disorder.
9. Aberrant drug screen.

On April 6, 2020, Dr. Barngrover wrote the following letter to the Claimant's attorney:

I have reviewed the treatment recommendations of Dr. Carlos Roman for Teresa Bernard dated 10/21/2019. There are several comments upon which I take issue.

First of all, Dr. Roman apparently concludes that Ms. Bernard finds no pain relief with the combination of the dorsal column stimulator and supplemental narcotic medication. He comments that "she had a revision of her spinal cord stimulator last year, which she told me today, really had no effect in her overall pain." I believe that Ms. Bernard would dispute that statement or she would have never undergone multiple surgeries to have it placed and battery renewal to begin with.

Secondly, Dr. Roman concludes that her pain management medications appear unnecessary and ineffective. Bear in mind that Ms. Bernard, by Dr. Roman's own admission has been on high dose narcotic medications for many years. "She is a legacy opiate patient, dating back now about a 15-year history of chronic long-term opiate use." I am not sure what this statement means, it sounds like some sort of "dog whistle" to let her W/C Insurer know that it is time to end her case. But this still doesn't change her pain status and limitation in function.

The recommendations by Dr. Roman appear very arbitrary. By history, hydrocodone has not been effective in relieving Ms. Bernard's pain complaints, if it was, I would prescribe this medication on a continuous basis while I was treating her. His recommended treatment appears to start a weaning down to "over the counter" medication which W/C would try to pass it on to the patient, or force Ms. Bernard to settle at a minimal figure.

Subjecting Ms. Bernard to periodic traveling to Arkansas for treatment and evaluation appears unreasonable in this time of national pandemic and social distancing. Surely, this type of traveling and unnecessary exposure would put the patient at increased risk. I remain available to help Ms. Bernard in the management of her chronic pain condition.

The Claimant continued to treat with Dr. Roman. On September 2, 2020, the Claimant had a follow-up visit via telemedicine conference with him. At that time, Dr. Roman noted that the Claimant continued with increasing back and leg pain. They discussed possible repeat epidural injection if the pain continued to get severe. Dr. Roman wrote, in relevant part:

CURRENT MEDICATIONS:

She has been off the tizanidine. It had been a good opiate-sparing maneuver at night. We talked about that. We will resume the tizanidine, 4 mg tablets, dispensing #60. We wrote a prescription for hydrocodone, 10 mg tablets, dispensing #90. Opiate counseling was done to maintain p.r.n. use of the drugs. We will not be escalating with medications any higher.

On December 15, 2020, the Claimant did another follow-up visit via telemedicine conference with Dr. Roman.

HISTORY OF PRESENT ILLNESS:

The patient is a 59-year-old female who suffers from chronic low back pain. She is a legacy opiate patient. She lives in Georgia, so given the travel restrictions we did a teleconference today. The face-to-face time on this was from 16:15 to 16:36. We discussed her ongoing struggle with her medications and her pain. She is having a difficult time sleeping at night, as well. So we are going to rotate the tizandine to trazodone. We encouraged p.r.n. dosing. A good bit of opiate counseling was doing in this visit to try to get healthier patterns of use, encouraging drug holidays and fasting periods. The back pain persists, particularly down the left lower extremity. She gets sciatica down the left leg. She has had lumbar fusion at L5-S1. She has had injection in the past without strong relief and has no desire to pursue those. She also suffers from Crohn's disease and gastroesophageal reflux disease.

CURRENT MEDICATIONS:

We will do trazodone 100 mg tablet, dispensing #30 for nighttime use, hydrocodone 10 mg tablet dispensing #90. Opiate counseling as stated.

FINAL DIAGNOSES:

1. Chronic low back
2. Lumbar fusion, L5-S1.
3. Lumbar radiculopathy left L5-S1.
4. Lumbar disc disease.
5. Opiate disc disease.
6. Opiate dependency.

PLAN:

As stated. Follow up in three months.

The Claimant followed up via video conference with Dr. Eugene Becker on March 19, 2021. At that time, the Claimant complained of pain in her low back and the left lower extremity. The Claimant stated that there was pain in her “whole leg.” On a scale of 0-10 (no pain=0, worst pain=10), the Claimant’s current level of pain was at a 7. The Claimant essentially stated that “everything” caused her back pain and symptoms to increase. At that time, the Claimant was experiencing weakness in her left lower extremity. Per this medical note, Dr. Becker assessed the Claimant with: “1. Low Back Pain. 2. Spondylosis w Rad Lumbo/Sacral. 3. Disc degeneration Lumbo/Sacral. 4. Post Laminectomy Syndrome. 5. Other Long Term Current Drug Therapy. 6. Long Term Use of Opiate Analgesic.”

On June 1, 2021, Dr. Roman wrote the following in a Clinic Note:

HISTORY OF PRESENT ILLNES:

The patient is a 60-year-old female who had a lumbar fusion at L5-S1. She was patient here for quite some time, was a Legacy[sic] opiate patient. She was prescribed high-does opiates for many years. She had a previous negative drug screen in the past, which was concerning. Now, she has a negative drug screen for medications as prescribed, having filled the hydrocodone on May 19th. A drug screen was done on the 20th and was a negative screen. Obviously, there is concern for potential for drug diversion and obviously the patient is not using the medication as prescribed, or as she states that she is. At this point, given that the two negative drug screens, I will no longer write any opiate prescriptions. I would recommend that any opiate prescriptions as pertains to her Workers’ Compensation injury be canceled. She does not need any opiate therapy. The risk of drug diversion is significant.

She would be maximal medical improvement as it pertains to the injury with no further need for any type of pharmacological therapy, as that was the only prescription she was getting as it pertains to her injury. There is no reason for clinical follow-up. Should there be any further questions, please let me know.

ADJUDICATION

I. Motion for Introduction of Additional Evidence

Following the hearing, on June 3, 2021, Respondents No. 1 filed a motion for the introduction of additional evidence, namely, Dr. Roman’s Clinic Note of June 1, 2021. The

Claimant filed a response with the Commission on that same day. Claimant agrees with the additional evidence being admitted into evidence. Respondent No. 2 has deferred to the outcome of litigation.

Therefore, after consideration of Respondents No. 1's motion to introduce new evidence and Claimant's response thereto and all other matters properly before the Commission, I find that Respondents No. 1's motion to make Dr. Roman's Clinic Note a part of the record should be and is hereby granted. Accordingly, Dr. Roman's report has been blue-back and made a part of the record and considered herein this Opinion.

II. Additional Medical Treatment

Employers must promptly provide for an injured worker such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003).

It is well-settled under Arkansas workers' compensation law that a Claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark App. 230, 184 S.W. 3d 31 (2004). I am persuaded that such circumstances exist in this instance.

Here, the crucial issue for determination is whether the Claimant should undergo continued medical treatment for her compensable back injury of September 17, 2005, in Arkansas under the care of Dr. Roman, or in her now home state of Georgia under Dr. Barngrover.

In the case at bar, the Claimant sustained an admittedly compensable back injury on September 17, 2005. The Claimant underwent conservative care with minimal relief of her symptoms.

Ultimately, the Claimant underwent lumbar fusion at L5-S1 by Dr. Zachary Mason. On November 15, 2006, Dr. Mason declared the Claimant to be at maximum medical improvement and assessed her with a twelve (12) percent impairment rating. Since this time, the Claimant has continued with debilitating ongoing chronic back pain and other related symptoms due to her compensable back injury. Ultimately, the Claimant was declared to be permanently and totally disabled due to her compensable back injury. As of the date of the hearing, the Claimant continued to receive these workers' compensation benefits.

Since this time, Respondents No. 1 have provided the Claimant with ongoing medical treatment for management of her back pain and other related symptoms. Specifically, the Claimant had a spinal cord stimulator implanted for chronic leg pain due to her work-related injury of September 2005. This treatment modality provided the Claimant with only minimal relief of her symptoms. The Claimant has undergone a multitude of epidurals and radiofrequency ablations for chronic back pain and related symptoms due to her compensable back injury. It appears that the Claimant received the ablations while under the pain management care of Dr. Qureshi. She has also been treated extensively with an opiate medication regimen.

The Claimant moved to Georgia and began pain management under the care of Dr. Barngrover. His pain management care included but was not limited to the use of Demerol (which has now been taken off the market), the spinal cord stimulator, and Lidoderm patch. Once Demerol became unavailable, Dr. Barngrover prescribed Hydromorphone for the Claimant's symptoms, which was not effective. Dr. Barngrover last evaluated the Claimant for chronic low back pain

due to her compensable injury on October 21, 2019. His assessment was “1. Lumbar neuritis. 2. Long term use of other medication (current) Use of Opiate Analgesic. 3. Fusion of spine, lumbar region.” At that time, he prescribed a trial of Nucynta and Oxymorphone, and held the Lidoderm patch. The Claimant also signed a pain medication contract and underwent a urine screen.

Respondents No. 1 requested that the Claimant undergo an IME by Dr. Roman in Arkansas. Dr. Roman performed this evaluation on October 21, 2019. At that time, Roman had a lengthy discussion with the Claimant concerning her medication regimen as outlined above. This essentially included a tapering off the medications prescribed by Dr. Barngrover.

The Claimant and her husband credibly testified that the Claimant was unable to function or enjoy any activity of daily living under the care of Dr. Roman. However, both the Claimant and her husband credibly testified that while under the care of Dr. Barngrover, the Claimant was able to get out of bed and perform minimal household chores. No testimony was elicited to the contrary.

Here, the evidence demonstrates that as a result of the Claimant compensable injury back, she has been assessed with “Fusion of the lumbar spine, chronic low back pain, lumbar radiculopathy left L5-S1, failed back syndrome, lumbar neuritis, and long-term use of opiates.” Under these circumstances, I find that the Claimant and her husband presented credible testimony about her continued need to seek medical attention under the care of Dr. Barngrover.

Although Dr. Roman had previously recommended a pain medication regimen which included hydrocodone, he has not recommended that the Claimant not receive any type of pharmacological therapy due to possible drug diversion after the Claimant underwent a negative drug screen. Dr. Barngrover stands ready to continue the Claimant’s pain management.

Therefore, in light of the Claimant's significant back injury, which required lumbar fusion surgery, her ongoing debilitating low back pain and related symptomology despite surgery and extensive conservative treatment modalities; the fact that she has been declared and accepted as being permanently and totally disabled due to her compensable back injury; the multitude of failed treatment with epidural steroid injections and radiofrequency ablations; the credible testimony of both the Claimant and her husband about the increase in her quality of life by Dr. Barngrover's treatment, the unreasonableness of traveling to Arkansas, along with the health risks posed by the COVID-19 pandemic; and because Dr. Roman has now decided he will not treat the Claimant with any medications, I find that the Claimant proved by a preponderance of the credible evidence that continued medical treatment under the care of Dr. Barngrover is reasonable and necessary for treatment of her compensable back injury of September 17, 2005. The treatment recommended by Dr. Barngrover is necessary to reduce and alleviate symptoms resulting from the Claimant's compensable back injury of September 2005, which has rendered her permanently and totally disabled.

Considering all of the foregoing, I find that the expert opinion of Dr. Barngrover should be given significant weight. However, due to all of the foregoing reasons, minimal weight has been afforded Dr. Roman's Opinion.

Moreover, I am cognizant that the Claimant tested positive for benzodiazepine. However, the Claimant explained that she took medication from a friend because the medication prescribed by Dr. Roman was not helping to relieve her symptoms and she was having problems sleeping. She also explained that prior to seeing Dr. Roman she would run out of her medication. Should the Claimant have future issues with similar incidents, these can be addressed by Dr. Barngrover.

Bernard – F611493

The evidence shows that the Claimant has signed a pain treatment agreement with him in this regard and undergoes regular drug screens.

ORDER

The Claimant proved by a preponderance of the evidence that additional medical treatment under the care of Dr. Barngrover is reasonably necessary for treatment of her compensable back injury of September 17, 2019.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge