BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H302325

ALISHA BERRY, Employee	CLAIMANT
HOME HELPERS OF NWA, Employer	RESPONDENT
AMTRUST NORTH AMERICA, Carrier	RESPONDENT

OPINION FILED DECEMBER 17, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 26, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on July 15, 2024, and an Amended Pre-hearing Order was filed on September 25, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The relationship of employee-employer-carrier existed between the parties on March 7, 2023.

3. The claimant sustained a compensable injury to her right knee on or about March 7, 2023.

4. All prior opinions are *res judicata*.

By agreement of the parties the issue to litigate is limited to the following:

1. Whether Claimant is entitled to additional medical treatment in the form of a trial spinal cord stimulator and prescription medications as recommended by Dr. Miedema.

The claimant's contentions are as follows:

> "The claimant contends that the respondents have repeatedly refused to pay the benefits awarded to her under the December 5, 2023, Opinion for a period of an excess of 20 days after the Opinion. They have willfully refused to pay the benefits awarded and are entitled to the 36% penalty provided by Arkansas Code Ann. §11-9-802 (e). In fact, the respondents have failed or refused to pay considerable benefits in a timely manner. The medical treatment provided and recommended by Dr. Miedema, her authorized treating physician is reasonably necessary under the provisions of Arkansas Code Ann §11-9-508. The respondents have controverted the claimant's entitlement to all temporary total disability benefits in excess of $208 per week."

The respondents' contentions are as follows:

> "The Respondents contend that all benefits awarded to the Claimant have been paid and no penalty is warranted."

The claimant in this matter is a 44-year-old female who sustained a compensable injury to her right knee on March 7, 2023. The respondent provided the claimant with medical treatment for her compensable knee injury including treatment from Dr. Tom Coker on June 5, 2023. Dr. Coker is an orthopedist, and, in his June 5, 2023, medical report discussed his belief that the claimant's compensable right knee injury goes beyond a "simple fall and contusion" due to the development of RSD in the claimant's right knee which Dr. Coker believed was related to her compensable right knee injury. Dr. Coker referred the claimant to a "physical medicine and rehab physician," one of which was specifically Dr. Mark Miedema. The claimant was also ordered to physical therapy and taken off work at that time.

The claimant entered physical therapy and began to see Dr. Miedema in June of 2023. During that time period the claimant's right knee symptoms continued. At the hearing in this matter the claimant described her right knee difficulties as follows:

> Q And why would you want that help? What is your problem currently?
>
> A Well, I am on crutches. I have a knee that all the way around, all the way to the bottom, the side, everything, it hurts. I can't bend it hardly. It feels like it is just tight, like a rubber band is wrapped around it just holding it there. I have burning pain. I have a cold leg and foot. My foot is numb constantly. I have tingling. It throbs. It aches. It's painful.
>
> Q Do you have discoloration of the skin?
>
> A Do what?
>
> Q Do you have discoloration of your skin around your knee?
>
> A I get discoloration all the way down my leg. Sometimes it stays there longer than others.

On October 16, 2023, the claimant was seen by Dr. Miedema. Following is a portion of that medical report where Dr. Miedema expresses his belief that the claimant's current difficulties are related to her compensable right knee injury and not related to her lumbar spine as follows:

> 1. Pain of the right knee joint-
> Ms. Berry presents for follow-up evaluation of several months right knee pain. She had a fall at work in March 2023 which precipitated her symptoms. She has been having to use crutches to get around. She has tried physical therapy for desensitizing techniques and attempts of improving range of motion as well as exercises for her lumbar spine. She is here to review the results of her MRI and discuss treatment options.
>
> She had an MRI of the right knee at Ozark on 5/22/2023 which showed a contusion of the anterior medial tibial condyle. On my review of her lumbar MRI taken at Prime Medical Imaging on

> 9/12/23 it shows mild degenerative changes of the lumbar spine. No neural compression at any level.
> M25.561: Pain in right knee
>
> 2. Lumbosacral radiculopathy-
> I do not think her current symptoms are referred from the lumbar spine
>
> I again educated the patient on conservative treatment options including physical therapy, home exercise program, healthy diet and lifestyle, acupuncture, massage, chiropractic care, pharmacotherapy and injections.
>
> I encouraged the patient to continue with a home exercise program previously taught by physical therapy.
> M54.17: radiculopathy, lumbosacral region

In that same report Dr. Miedema describes his opinion as to the source of the claimant's symptoms and treatment for her right knee as follows:

> 3. Chronic pain syndrome-
> Chronic pain syndrome secondary to complex regional pain syndrome type 1 in the lower extremity.
> G89.4: Chronic pain syndrome
>
> 4. Complex regional pain syndrome type 1-
> Right lower extremity CRPS type 1 after a fall and subsequent bony contusion. The patient qualifies for diagnosis of Complex Regional Pain Syndrome (CRPS) Type 1 based on the Budapest criteria presenting symptoms of allodynia & hyperalgesia, with associated vasomotor/sudomotor changes. She saw Dr. Coker for the knee and there is no surgical indication at this time. She has been doing PT with significant ongoing pain and functional limitation. She cannot bear weight on her right leg and has been ambulating using crutches.
>
> She is s/p lumbar sympathetic nerve blocks on 7/2/23 and 8/3/23 with temporary relief after each injection which is helpful for diagnostic purposes. She has continued working with physical therapy for improving range of motion and desensitization techniques. She continues to utilize pregabalin 100 mg twice per day, Celebrex 200 mg once per day, and baclofen 10 mg 3 times per day as needed. In the setting of CRPS and failure to improve with conservative treatments over the past 7 months I think

> neuromodulation is the appropriate next step in her care. I explained the mechanism of action of spinal cord stimulation. We discussed the trial procedure and permanent implant. We discussed the risk, benefits and alternatives. Given the focal pain in her right knee in the absence of back pain I think a dorsal root ganglion stimulation is the most appropriate. We will target the right L4 and L5 nerve roots. We will get her set up with neuropsychology evaluation for preoperative clearance.
>
> I do not yet think she has reached maximal medical improvement. I do not think she can return to work at this time.

It is during the claimant's October 16, 2023, visit with Dr. Miedema that he first recommends a trial spinal cord stimulator for the claimant. Dr. Miedema also recommends prescription medications for her right knee at that time. This is the central issue in the matter before the Commission as to whether the claimant is entitled to additional medical treatment in the form of a trial spinal cord stimulator and prescription medications recommended by Dr. Miedema.

The respondent sent the claimant to see Dr. Chris Dougherty for a second opinion. On January 16, 2024, Dr. Dougherty authored a letter to the respondent. In that letter Dr. Dougherty answered several questions posed to him by the respondent in regard to his examination of the claimant. Following is a portion of the questions posed, and answers given by Dr. Dougherty:

> 3. In your expert opinion, is the treatment of RSD and proposed treatment of spinal cord stimulator related to the 03/07/2023 work injury? Do you believe the Spinal Cord Stimulator is needed for the treatment of RSD? Please explain in detail.
>
> In my expert opinion, the treatment of the RSD has been appropriate and within the guidelines and standards of care. Improvement after lumbar injection correlates directly with the patient's diagnosis. Improvements also indicates the patient is an excellent spinal cord stimulator candidate.
>
> ***

> 6. Has all treatment for the 03/07/2023 injury been appropriate and necessary, or do you feel it has been excessive? Please explain in detail.
>
> The record is reviewed in great detail. The treatment appears to be medically necessary, appropriate and within the guidelines of treatment for RSD. No treatment is noted to be excessive.
>
> 7. What further treatment, if any, is necessary and appropriate as directly related to the 03/07/2023 injury? Please provide a specific treatment plan and duration that this treatment should be implemented.
>
> Specifically, treatment up to date has been medically necessary, appropriate and meets guidelines. Improvements in pain as documented by the lumbar injections indicates the patient is an excellent candidate for a spinal cord stimulator as is noted in the record. The specific treatment plan would be the implementation of the spinal cord stimulator first through a trial and if the trial is successful implantation of a permanent spinal cord stimulator. The treatment of duration is a lifetime.
>
> ***
>
> 11. In your medical opinion, has claimant reached Maximum Medical Improvement, as directly related to the 03/07/2023 injury? Please explain in detail. If the claimant is not yet at Maximum Medical Improvement, when will this status be reached?
>
> The claimant has not reached maximum medical improvement as it related to the 3/7/2023 injury. She currently suffers from RSD also know as chronic regional pain syndrome. The request to estimate when MMI is achieved will not be known until the patient undergoes installation of the spinal cord stimulator trial and in the event this is successful, a permanent spinal cord stimulator.

The respondent sent the claimant to see Dr. Richard Back, a neuropsychologist, at Northwest Arkansas Psychological Group for a "pre-surgical evaluation." That report is found at Respondents' Exhibit 1, pages 1-3. From a review of the report, it appears Dr. Back administered the Minnesota Multiphasic Personality Inventory-2 to the claimant. Following is the "Test Results and Interpretation" portion of that report:

> The MMPI-2 was completed. An examination of the validity scales indicates that this individual produced an interpretable profile. Her score on the F scale was elevated moderately. These patients are acknowledging unusual experiences represented in these scales more than the typical person. The elevation reflects the extent and severity of their psychopathology, and how the patient has adjusted to his or her psychopathology. This individual also produced elevations on scales 2 and 3. Individuals who test high on these are likely to be experiencing a mild to moderate level of emotional distress characterized by dysphoria, worrying, and anhedonia. They frequently worry about something. They feel inadequate, helpless, and insecure. They are easily hurt by criticism or scolding and have difficulty expressing their feelings. They are over controlled and fearful of losing control. They are likely to experience increases in depression, fatigue, and physical symptoms in response to stress. They are likely to express their anger overtly. They have concentration difficulties and memory problems. They have low self-esteem, lack self-confidence, and are self-doubting. Their judgment is not as good now as it was in the past. They sometimes think they are about to "go to pieces."
>
> The Paindex was calculated on this patient, from her MMPI-2 scores. Her total, 19, exceeds the cut off associated with good prognosis (13). Patients scoring in this elevated range are poor candidates for pain reduction after a "surgical" intervention. The Paindex accurately identifies 87% of patients who are likely to show a significant reduction in pain complaints after surgery.

The claimant was seen for a "behavioral assessment" on May 28, 2024, by Juan Valenzuela, LCSW, at Advantage Point Behavioral. The claimant testified that this evaluation was recommended by Dr. Miedema. Following is a portion from the report of that assessment:

> PATIENT BEHAVIORAL ASSESSMENT SCORES
>
> NIDA SCREEN: This screening is composed of four distinct categories: Alcohol use, Tobacco use, Illegal Drugs use and Prescription Drugs for non-medical reasons use over the past year. The patient reports NO to use of any substances or prescription drug use for non-medical reasons which reinforces abstinence. There are no known addictions reported. I do not see any factors that would hinder the success of a spinal cord stimulator.

CHRONIC PAIN ASSESSMENT QUESTIONNAIRE: This questionnaire assesses the two parts of chronic pain that change over time: Persistent Baseline Pain and Breakthrough Pain. The patient rated their baseline pain as: 8, Severe pain. The patient reports feeling this pain in the following areas: right knee. The patient reports that the pain feels like: burning and hurting. The patient rates their breakthrough pain as: 0. The patient reports feeling this pain in the following areas: N/A. The patient reports that the pain feels like: N/A. I do not see any factors that would hinder the success of a spinal cord stimulator.

PHQ-9 ASSESSMENT: The patient's PHQ-9 score is: eighteen which indicates the level of the patient's depression severity. The level of depression severity of this patient is moderately severe. I do not see any factors that would hinder the success of a spinal cord stimulator.

Depression, Anxiety and Stress Scale (DASS-21): the DASS-21 is composed of 21 questions. The patient scored a 20 on the depression scale. This is in the moderate range. The patient scored a 4 on the anxiety scale. This is in the normal range. The patient scored a 16 on the stress scale. This is in the mild range. I do not see any factors that would hinder the success of a spinal cord stimulator.

PAIN CATASTROPHIZING SCALE: This scale consists of 13 items across through subscales. The patient scored a: 31 which does indicate a clinically relevant level of catastrophizing.

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Recommendations: Alisha Berry's mental health history suggests that she is a good spinal cord stimulator candidate. The patient indicates that she has been adequately informed regarding the risks of, the benefits of, the alternatives to, and the potential complications of the procedure. The patient asserts that she has made an informed decision. The patient professes reasonable post-procedural expectations and describes reliable relationships that will support her in her journey to reduce chronic pain. Arrangements for post-operative care and assistance have been made.

I SEE NO SIGNIFICANT PSYCHOLOGICAL FACTORS THAT WOULD HINDER THE SUCCESS OF A SPINAL CORD STIMULATOR. I AFFIRM THAT ALISHA BERRY IS A GOOD CANDIDATE FOR A SPINAL CORD STIMULATOR.

On July 11, 2024, the claimant was again seen by Dr. Miedema. Following is a portion of that report:

> 3. Complex regional pain syndrome type 1 –
> Right lower extremity CRPS type 1 after a fall and subsequent bony contusion. The patient qualifies for diagnosis of Complex Regional Pain Syndrome (CRPS) Type 1 based on the Budapest criteria presenting symptoms of allodynia & hyperalgesia, with associated vasomotor/sudomotor changes. She saw Dr. Coker for the knee and there is no surgical indication at this time. She has been doing PT with significant ongoing pain and functional limitation. She cannot bear weight on her right leg and has continued to ambulate with crutches.
>
> She is s/p lumbar sympathetic nerve blocks on 7/3/23 and 8/3/23 with temporary relief after each injection which is helpful for diagnosis purposes to confirm the diagnosis of CRPS.
>
> She can continue pregabalin 100 mg twice per day. Celebrex 200 mg once per day, and baclofen 10 mg 3 times per day as needed. All of these medications are specifically to treat neuropathic pain from complex regional pain syndrome.
>
> In the setting of CRPS and failure to improve with appropriate conservative treatments I still think neuromodulation is the appropriate next step in her care. She had an Independent Medical Evaluation that was done with Dr. Chris Dougherty. Unfortunately her insurance denied the spinal cord stimulator. This is certainly frustrating since she has ongoing symptoms of CRPS and has not improved with appropriate conservative treatments. I am not sure why they denied the spinal cord stimulator. I therefore think it is reasonable to try repeat lumbar sympathetic block to see if we can reinstate some pain relief.
>
> In the meantime, I also think it is reasonable for her to try aquatic therapy for strengthening, stabilization and desensitization in the setting of complex regional pain syndrome.
>
> She is approaching maximum medical improvement. She will certainly have a permanent impairment as a result of this injury however and will require ongoing treatment including – pharmacotherapy with Celebrex, baclofen and Lyrica. 6 weeks of physical therapy per year and up to 4 lumbar sympathetic blocks

> per year. These treatments would be indefinite since complex regional pain syndrome is not curable. This is one reason why think spinal cord stimulation would also be a good alternative.
>
> We will get her set up with a lumbar sympathetic block.
>
> I will follow-up with her after this procedure reassess her progress
> G90.521: Complex regional pain syndrome 1 of right lower limb

On August 7, 2024, the claimant was again seen by Dr. Miedema. Following is a portion of that report:

> Assessment/Plan
> ODI 37 Completely Disabled
>
> 1. Pain of the right knee joint –
> Mrs. Berry presents for follow-up evaluation of over a 1 year right knee pain. To review she had a fall at work in March 2023 which precipitated her symptoms. She has tried physical therapy, exercising at home, pharmacotherapy and injections without sustained relief. She is here to review treatment options. She has had worsening pain.
>
> To review MRI of the right knee at Ozark on 5/22/2023 showed a contusion of the anterior medial tibial condyle. Lumbar MRI taken at Prime Medical Imaging on 9/12/23 showed mild degenerative changes of the lumbar spine. No neural compression at any level.
> M25.561: Pain in right knee
>
> 2. Chronic pain syndrome –
> Chronic pain syndrome secondary to complex regional pain syndrome type 1 in the right lower extremity.
> G89.4: Chronic pain syndrome
>
> 3. Complex regional pain syndrome type 1 –
> Right lower extremity CRPS type 1 after a fall and subsequent bony contusion. She had a work injury as a direct result of her current symptoms.
>
> She qualifies for diagnosis of Complex Regional Pain Syndrome (CRPS) Type 1 based on the Budapest criteria presenting symptoms of allodynia & hyperalgesia, with associated vasomotor/sudomotor changes. She saw Dr. Coker for the knee and there is no surgical indication at this time. She has been doing

PT with significant ongoing pain and functional limitation. She cannot bear weight on the right leg and has continued to ambulate with crutches.

She is s/p lumbar sympathetic nerve blocks on 7/3/23 and 8/3/23 with temporary relief after each injection with is helpful for diagnostic purposes to confirm the diagnosis for CRPS.

I would recommend she continue pregabalin 100 mg twice per day for neuropathic pain, Celebrex 200 mg one per day as an anti-inflammatory, and baclofen 10 mg 3 times per day as needed. All of these medications are specifically to treat neuropathic pain from complex regional pain syndrome.

In the setting of CRPS and failure to improve with appropriate conservation treatments I still think neuromodulation is the appropriate next step in her care. She had an Independent Medical Evaluation that was done with Dr. Chris Dougherty – he agreed with the diagnosis of CRPS and recommendation for spinal cord stimulation.

Unfortunately her insurance denied the spinal cord stimulator. Her insurance also denied ongoing therapy, aquatic therapy and a trial of a repeat lumbar sympathetic block. The therapy is for desensitization in the setting of CRPS. The lumbar sympathetic block is for the treatment of pain.

Denial of care certainly delays treatment and perpetuates pain in the setting of complex regional pain syndrome.

She is approaching maximum medical improvement. As mentioned previously she have a permanent impairment as a result of this injury and require ongoing treatments including – pharmacotherapy with Celebrex, baclofen and Lyrica. 6 weeks of physical therapy per year and up to 4 lumbar sympathetic blocks per year. These treatments would be indefinite since complex regional pain syndrome is not curable.

I think a functional capacity evaluation would be helpful to determine her permanent work restrictions. For now I do not think she has reached maximum medical improvement. She may not return to work.

I will follow-up with her after the functional capacity evaluation.
G80.521: Complex regional pain syndrome 1 of right lower limb

Dr. Miedema authored a letter to "To Whom It May Concern" regarding the claimant's course of treatment and his recommendations. Dr. Miedema also, in part, discussed the psychological evaluations of the claimant. The letter is undated but given the content and context of the letter it was clearly written sometime after the claimant's August 2024 visit with Dr. Miedema. The body of that letter follows:

> As you may know Mrs. Berry has been under my care since our initial evaluation on 6/14/2023. She has documented complex regional pain syndrome (CRPS) type 1 of the right lower extremity following a work related injury.
>
> When she failed to improve with appropriate conservative treatments (physical therapy, home directed exercises, pharmacotherapy and lumbar sympathetic blocks) over the past 12 months I recommended a trial of spinal cord stimulation as the appropriate next step in her care.
>
> Unfortunately this modality was denied by her insurance. She had an Independent Medical Evaluation in which the Independent physician also recommended spinal cord stimulation for the treatment of CRPS. As you mentioned, she had neuropsychology evaluation in preparation for a trial spinal cord stimulation. She had an evaluation on 5/28/24 which indicated she would be a good candidate for spinal cord stimulation. She had an evaluation on 4/22/24 which indicated she would not be a good candidate. This evaluation seemed to be more focused on surgery rather than spinal cord stimulation specifically.
>
> When we use spinal cord stimulation in the treatment of chronic pain and in this case CRPS specifically we first do a trial procedure. The trial procedure is not a surgery but rather an outpatient procedure done under local anesthetic and mild intravenous sedation. It involves percutaneously inserting spinal cord stimulator leads within the epidural space to help modulate pain in the setting of CRPS. The trial procedure lasts for 1 week. During this time the patient wears the devise externally to see if it is helpful. One week after the trial procedure the leads are removed. If the trial procedure is successful then they undergo permanent placement of the system. This is a surgery to internalize the system. It is not a surgery to treat an anatomic problem but

> rather a pain problem. It is an outpatient surgery which involves implanting the leads underneath the skin and tunneling them to connect with a battery.
>
> I hope this helps clarify some of your questions. Do not hesitate to contact me with any further questions. Thank you for allowing me to participate in the care of this patient.

The claimant has asked the Commission to determine whether she is entitled to additional medical treatment in the form of a trial spinal cord stimulator and prescription medications and recommended by Dr. Miedema. In order to prove her entitlement to additional medical treatment the claimant must prove that the treatment is reasonable and necessary medical treatment for her compensable right knee injury.

Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, 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 reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

Dr. Miedema clearly believes the claimant should undergo a trial spinal cord stimulator and have the medications he prescribed. Dr. Miedema’s opinion is supported by Dr. Dougherty to whom the respondent sent the claimant for a second opinion. Dr. Back, who administered the MMPI-2 test to the claimant, did not recommend the spinal cord stimulator, stating in his report “A spinal chord stimulator is not recommended for this patient.” I note that Dr. Back’s report recommendations do not seem to distinguish the fact that the claimant has not been recommended for a spinal cord stimulator, only a trial of a spinal cord stimulator. That trial will

determine if a spinal cord stimulator can provide the claimant relief from her compensable right knee injury symptomology. Dr. Miedema, in his undated letter, addresses Dr. Back's evaluation as follows, "This evaluation seemed to be more focused on surgery rather than spinal cord stimulation specifically."

The claimant's second psychological evaluation, which appears to have been done via video by a state licensed counselor, found the claimant to be a good candidate. That report also fails to consider the trial nature of the requested treatment.

Given all the evidence before the Commission, I find that the medical evidence and opinions from Dr. Miedema, Dr. Dougherty, and the state licensed counselor outweigh the concerns and opinion of Dr. Back. The claimant is able to prove by a preponderance of the evidence the trial spinal cord stimulator and medications prescribed by Dr. Miedema are reasonable and necessary medical treatment for her compensable right knee injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 15, 2024, and contained in an Amended Pre-hearing Order filed September 25, 2024, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a trial spinal cord stimulator and prescription medications as recommended by Dr. Miedema.

ORDER

The respondents shall pay the cost associated with the claimant's trial spinal cord stimulator and the cost of the prescription medications recommended by Dr. Miedema for her compensable right knee injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

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HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE