

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G405654**

BETTY ETZBERGER, EMPLOYEE

CLAIMANT

DOLLAR GENERAL, EMPLOYER

RESPONDENT

**DOLLAR GENCORP, LLC/ YORK RISK SERVICES
GROUP, INC., INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 9, 2021

The parties agreed to litigate this matter by the submission of stipulations. The agreed Joint Stipulations, the Prehearing Order of April 27, 2021, and Prehearing Questionnaires of the parties are blue-backed and attached to this Opinion. The sole issue before the Commission is whether the treatment recommended by Doctor Baskin is reasonable and necessary. In addition, both parties were instructed to submit briefs, and these briefs are blue-backed and attached to this Opinion.

Claimant is represented by Daniel E. Wren, Attorney at Law, Little Rock, Arkansas.

Respondent is represented by Jason A. Lee, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE AND REVIEW OF STIPULATIONS

A prehearing telephone conference was conducted on the 27th day of April, 2021, and the parties agreed that the sole issue before the Commission is whether the treatment recommended by Doctor Baskin is reasonable and necessary. The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and the Opinion of February 9, 2018, shall be incorporated herein by reference as the law of the case.

The parties' Joint Stipulations provide that the employer/employee relationship existed at all times pertinent hereto and also to the authenticity of all medical records. This matter came before the Commission on January 8, 2018, on a claim for additional medical treatment. An Opinion dated February 9, 2018, provided the claimant was

entitled to additional medical care as requested by the claimant, specifically a spinal cord stimulator. Prior to the hearing, the respondents had the claimant undergo a neuropsychological evaluation by Doctor Judy White Johnson, who concluded the claimant was not a good candidate for the stimulator because of several factors, including somatic focus, severe depression, very low expectations of physically improving, and comfort in the patient role. After the issuance of the Opinion of February 9, 2018, the parties, as per the stipulations, agreed amongst themselves, in lieu of an appeal, to a binding neuropsychological evaluation by Doctor Zolten.

The stipulations provide that Doctor Zolten agreed with Doctor Johnson that the claimant was a poor candidate for a spinal cord stimulator based upon findings that the claimant's test results were "mostly invalid secondary to exaggeration of symptoms and poor overall effort." Doctor Zolten went on to state the claimant's Pain Disability Index scores demonstrated exaggerated self-ratings. Additionally, he noted that her exaggeration of symptoms was common for people who have secondary gain issues, depression, somatic preoccupation, histrionic tendencies, anxiety, and perceived loss of personal control for an unsophisticated and psychologically naïve individual who does not have psychological resources for coping with their problems. During this time, the claimant continued pain management with Doctor William Ackerman. Subsequently, the respondents filed a Motion for an Independent Medical Exam (IME), and an Order was entered requiring the claimant to undergo an IME with the provider to be chosen by the Medical Cost Containment Division of the Commission. Medical Cost Containment selected Doctor Barry Baskin. The parties stipulated the respondents' attorney then sent letters to both Doctor Ackerman and Doctor Baskin. Doctor Ackerman's response, which

is dated March 10, 2020, is incorporated at pages 1-4 of the claimant's medical index. Doctor Ackerman opined that, in his medical opinion, the claimant had sufficient pathology to warrant pharmacological pain management. Doctor Baskins' response at pages 5-8 of the claimant's medical index provided he did not believe it was likely that ongoing pain management would be effective for the claimant and that she should receive physical therapy and lumbar epidural steroid injections instead.

At this point, the parties stipulated that the respondents notified the claimant they would no longer authorize continued pharmacological pain management by Doctor Ackerman, but if the claimant elected to undergo the treatment recommended by Doctor Baskin, the respondents would provide it. On April 30, 2020, the parties stipulated that the claimant's attorney responded to the offer by stating that, unless the offer for treatment by Doctor Baskin also included the treatment recommended by Doctor Ackerman, the claimant did not want it and wished to continue pain management with Doctor Ackerman. After several months with no treatment, the claimant informed the respondents that she was willing to undergo the treatment suggested by Doctor Baskin. At this point, the parties stipulated that because the claimant had initially denied the treatment prescribed by Doctor Baskin, the respondents' position was that they would currently not pay for it and would also not pay for the resumption of treatment by Doctor Ackerman.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The Opinion of February 9, 2018, is hereby incorporated by reference as the law of the case.
3. It is noted that the Opinion of February 9, 2018, provided that the Arkansas Workers' Compensation Commission has jurisdiction over the

- claim and the stipulations agreed to by the parties at that time were accepted as fact. The claimant, in the Opinion of February 9, 2018, was found to have satisfied the required burden of proof to prove by a preponderance of the evidence that she was entitled to additional medical care, specifically a spinal cord stimulator.
4. In lieu of an appeal of the Opinion of February 9, 2018, the parties agreed to a binding neuropsychological evaluation by Doctor Zolton, who issued an opinion which agreed with the opinion of Doctor Johnson.
 5. An Order for an Independent Medical Exam, which named Doctor Barry Baskin as the provider, was issued by the Commission at the request of the respondents.
 6. Doctor Baskin opined that the claimant needed a different type of treatment than the treatment recommended by Doctor Ackerman.
 7. The respondents initially offered to provide the treatment recommended by Doctor Baskin, but not the treatment recommended by Doctor Ackerman, and the claimant turned down the offer at that time.
 8. After a period of several months, the claimant amended her position and agreed to accept the treatment prescribed by Doctor Baskin, but at that time, the respondents stated that they would not provide the treatment, since the claimant had initially denied it.
 9. The claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that the additional medical care recommended by Doctor Baskin is reasonable and necessary and that she is entitled to that additional care.

DISCUSSION AND ADJUDICATION OF ISSUES

In determining whether the claimant has sustained her required burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. Dalton v. Allen Engineering Co., 66 Ark. App. 201, 635 S.W.2d 823 (1982). Preponderance of the evidence means the evidence having greater weight or convincing force. Metropolitan Nat'l Bank v. La Sher Oil Co., 81 Ark App. 263, 101 S.W.3d 252 (2003). Further, pursuant to Ark. Code Ann. § 11-9-509(a), medical benefits owed under the Workers' Compensation Act are only those that are reasonable and necessary. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that the medical is treatment is reasonably necessary for the treatment of the compensable injury. Owens Plating Co. v. Graham, 102 Ark. App. 299, 284 S.W.3d 537 (2008). What constitutes reasonable and necessary treatment is a question for the Commission. Anaya v. Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W.3d 269 (2008). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission filed December 13, 1989 (Claim No. D512553). Also, the respondents are only responsible for medical services which are causally related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. Foster v. Kann Enterprises, 2019 Ark. App. 746, 350 S.W.2d 796 (2009).

Here, the treatment by Doctor Baskin was initially authorized by the respondents, but the claimant denied the original offer of treatment by Doctor Baskin, due to the fact she preferred the treatment recommended by Doctor Ackerman. There is no evidence that the claimant wanted no treatment. After the absence of treatment for approximately six (6) months, the claimant agreed to the treatment recommended by Doctor Baskin, the provider chosen by Medical Cost Containment Division, for an IME. This treatment by Doctor Baskin was clearly intended to reduce or alleviate the symptoms from the compensable injury and was still within a reasonable period of time. Consequently, this treatment is determined to be reasonable and necessary medical services, and the claimant is found to be entitled to it.

Based upon the above evidence and the applicable law, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that the requested medical treatment as recommended by Doctor Baskin is reasonable and necessary, and the claimant is entitled to the additional medical treatment as recommended by Doctor Baskin.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge