

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G304374

JOHN EVANS, Employee	CLAIMANT
ACME TRUCK LINE, INC., Employer	RESPONDENT #1
CONTINENTAL INDEMNITY CO., Carrier	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED JANUARY 14, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondent #1 represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

Respondent #2 represented by CHRISTY L. KING, Attorney, Little Rock, Arkansas; although not present at hearing and deferring to the outcome of litigation.

STATEMENT OF THE CASE

On December 14, 2020, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 7, 2020 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The employee/employer/carrier relationship existed between claimant and

respondent #1 on May 31, 2013.

3. The claimant sustained a compensable injury on May 31, 2013.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$602.00 for total disability benefits and \$452.00 for permanent partial disability benefits.

5. Claimant is permanently totally disabled.

At the time of the pre-hearing conference the parties agreed to litigate the following issues:

1. Date claimant reached maximum medical improvement.

2. Claimant's entitlement to psychiatric treatment.

At the time of the hearing the parties agreed to stipulate that claimant reached maximum medical improvement on May 20, 2020. Therefore, that is no longer an issue. Also at the hearing, claimant initially indicated that in addition to requesting psychiatric treatment, he was also requesting neurological treatment; however, later in the hearing the parties agreed that this issue had been resolved. Claimant's attorney also raised as an issue his entitlement to an attorney fee in the amount of 12.5% to be withheld from future permanent total disability benefits payable to claimant. Those payments would be deducted from claimant's benefits and paid directly to claimant's attorney. Claimant's attorney is not requesting a fee from either respondent and he is not requesting an attorney fee on any permanent total disability benefits previously paid to claimant. Thus, the issues for litigation include claimant's entitlement to psychiatric treatment as well as the requested attorney fee.

The claimant contends he is entitled to psychiatric treatment even if it has to be

with an out-of-state physician.

Respondent #1 contends that is has attempted to find claimant psychiatric treatment.

Respondent #2 contends the claimant reached maximum medical improvement and the end of his healing period on May 20, 2020. It stands ready to commence weekly benefits in compliance with A.C.A. §11-9-502. Therefore, the Trust Fund has not controverted the claimant's entitlement to benefits.

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 his 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 a pre-hearing conference conducted on October 7, 2020 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant reached maximum medical improvement as of May 20, 2020 is also hereby accepted as fact.

3. Claimant is entitled to continued psychiatric treatment from either an in-state provider or an out-of-state provider.

4. Respondent is not liable for paying for psychiatric treatment at a rate greater than that provided in the AWCC Official Fee Schedule adopted by the Commission in Rule 099.30 pursuant to A.C.A. §11-9-703.

5. Claimant's attorney is entitled to payment of a fee in the amount of 12.5% on permanent total disability benefits payable to claimant from this date forward. Those payments are to be deducted from claimant's benefits and paid to claimant's attorney.

FACTUAL BACKGROUND

The claimant is a 64-year-old man who admittedly suffered multiple injuries when he was involved in a tragic motor vehicle accident on May 31, 2013. The parties have stipulated that claimant is permanently totally disabled as a result of his compensable injuries. As a result of those injuries, claimant has undergone various medical treatments which are not relevant to the issues currently before the Commission.

Claimant's treatment has included psychiatric treatment with medication from Dr. Chambers. In a letter dated February 1, 2019, Dr. Chambers indicated that due to ongoing health issues he was closing his psychiatric practice. He advised claimant and his other patients of several providers that might be available to take over each patient's psychiatric care. Claimant testified that he contacted each of those providers and each was unwilling to take on workers' compensation patients. In addition, the documentary evidence indicates that the parties have made an effort to find claimant psychiatric care both in state and out of state without success as of the date of the hearing.

Claimant has filed this claim contending that he is entitled to continued psychiatric treatment. In addition, his attorney is requesting a 12.5% fee to be paid from claimant's future permanent total disability benefits.

ADJUDICATION

Claimant contends that he is entitled to continued psychiatric treatment for his compensable injury. Respondent does not deny that claimant is entitled to continued psychiatric treatment, but states that it has been unable to find a provider willing to treat claimant and abide by the AWCC Medical Fee Schedule. Claimant contends that if a psychiatrist cannot be found to treat claimant because of the fee schedule, then respondent should find a psychiatrist and if necessary pay the psychiatrist's usual and customary fee.

While claimant is by respondent's own admission entitled to continued psychiatric treatment, I do not find that respondent is liable for paying for psychiatric treatment at a rate greater than that provided in the AWCC medical fee schedule. This would apply to both in state and out of state providers.

The Commission's authority to establish a medical fee schedule is set forth in A.C.A. §11-9-517 which states:

The Workers' Compensation Commission is authorized to establish rules, including schedules of maximum allowable fees for specified medical services rendered with respect to compensable injuries, for the purpose of controlling the cost of medical and hospital services and supplies provided pursuant to §§ 11-9-508 – 11-9-516. (Emphasis added.)

The fact that the fee schedule provides a maximum allowable amount which respondent can be ordered to pay is further evidenced by numerous references to Commission Rule 099.30 which established the medical fee schedule. For instance, Part I(A)(1)(b) states that this rule:

- (b) Establishes schedules of maximum fees by a health facility or health care provider for such treatment or attendance, service, device, apparatus, or medicine.

Furthermore, Rule 30 defines “maximum fee” as “the maximum allowable fee for a procedure established by this rule.” Rule 30, Part I, (1) states:

Reimbursement for health care services shall be the lesser of (a) the provider’s usual charge, or (b) the maximum fee calculated according to the AWCC Official Fee Schedule (and/or any amendments to that fee schedule), or (c) the MCO/PPO contracted price, where applicable. A licensed provider shall receive no more than the maximum allowable payment, in accordance with this rule, for appropriate health care services rendered to a person who is entitled to health care service.

Furthermore, Subsection L of Part I of Rule 30 states:

L. Amounts in Excess of Fees.

The provider shall not bill the employee, employer, or carrier for any amount of health care services provided for the treatment of a covered injury or illness when that amount exceeds the maximum allowable payment established by this rule.

Out-of-state providers are covered by Section R of Part I which states:

All services and requests for change-of-physician to out-of-state providers must be made to providers who agree to abide by the AWCC Medical Fee Schedule. Providers shall sign an agreement stating they shall comply with AWCC Rule 30. Carriers/self-insured employers which are not contracted with a certified Managed Care Organization shall be responsible for obtaining this agreement.

Finally, Part VI of Commission Rule 30 contains the actual medical fee schedule and it states in Subsection (B) with respect to reimbursement:

Reimbursement to providers shall be the lesser of the following:

1. The provider's usual charge
2. The fee calculated according to the AWCC Official Fee Schedule
3. The MCO/PPO contracted price

In summary, claimant is admittedly entitled to additional psychiatric treatment; however, I have no authority for finding that respondent is liable for providing treatment at a rate in excess of the AWCC medical fee schedule. To do so would be contrary to A.C.A. §11-9-517 and Commission Rule 099.30. Claimant did indicate at the hearing that he would be willing to travel out of state for psychiatric treatment; including, Oklahoma City, Tulsa, Joplin, or Springfield. The parties are encouraged to continue their efforts to find claimant a psychiatric provider who is willing to abide by the AWCC Medical Fee Schedule.

The final issue for consideration involves the request for an attorney fee. As previously noted, claimant's attorney is requesting a 12.5% fee to be withheld from future permanent total disability benefits paid to claimant. A.C.A. §11-9-715(a)(1)(C)(i) states:

Whenever the commission finds that a claim has not been controverted but further finds that bona fide legal services have been rendered in respect to the claim, then the commission shall direct the payment of the fees by the injured employee or dependents of a deceased employee out of the compensation awarded.

Subsection 2 further states that in determining the amount of the fee when a claim

is not controverted the Commission may use its discretion in awarding a fee and shall take into consideration the nature, length, and complexity of the services performed and the benefits resulting to the compensation beneficiaries. In this particular case, claimant testified that Mr. Walker had been representing him since November 2013. He acknowledged that Mr. Walker had been available to answer all of his questions and resolve potential conflicts. Claimant indicated that it was his understanding that he had been accepted as permanently and totally disabled in part due to the fact that he was represented by Mr. Walker. Claimant also acknowledged that he had no objection to paying a 12.5% fee and requested that the Commission approve a 12.5% attorney fee to be paid out of his future permanent total disability benefits.

Based on the foregoing, and after consideration of all relevant factors, I find that Mr. Walker is entitled to an attorney fee in an amount equal to 12.5%. This fee is to be deducted from claimant's future permanent total disability payments made by both respondent #1 and respondent #2.

AWARD

Claimant is entitled to continuing psychiatric treatment for his compensable injury. This treatment can be provided by an in-state provider or an out-of-state provider. However, respondent is not ordered to pay for services at a rate greater than that set forth in Commission Rule 30. The parties are encouraged to continue their efforts to find a psychiatric provider who is willing to abide by the AWCC Medical Fee Schedule. Claimant's attorney is hereby awarded a 12.5% fee to be withheld from future permanent total disability benefits payable to the claimant by respondent #1 and by respondent #2.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$251.15.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE