

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204851

| | |
|--|------------|
| JANET FOSTER, EMPLOYEE | CLAIMANT |
| GOODWILL INDUSTRIES OF AR, EMPLOYER | RESPONDENT |
| ATA WORKERS' COMP SI TRUST/RISK MGT., INSURANCE CARRIER/TPA | RESPONDENT |

OPINION FILED JANUARY 27, 2025

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

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

Respondents represented by the HONORABLE MELISSA WOOD, Attorney, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondent appeals an opinion and order of the Administrative Law Judge filed May 15, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on November 8, 2023, and contained in an amended pre-hearing order filed February 23, 2024, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Shamim.
3. Claimant has met her burden of proving by a preponderance of the evidence that the proposed weight loss program at Metabolic Research Center is reasonable and necessary medical treatment for her compensable injury.
4. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits from December 19, 2022 through January 6, 2023. Respondent is entitled to a credit for any temporary total disability benefits previously paid.
5. Claimant's attorney is entitled to the maximum controverted attorney fee on any indemnity benefits which were unpaid.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's May 15, 2024 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

FOSTER – H204851

For prevailing on this appeal before the Full Commission, Claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715 (Repl. 2012). For prevailing on appeal to the Full Commission, the Claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. In my *de novo* review of the file, I find the claimant is not entitled to additional treatment in the form of a weight loss program.

The claimant, Janet Foster, suffered a compensable hernia on June 6, 2022. The claimant underwent a hernia repair without mesh on December 19, 2022, and now seeks additional medical treatment in the

form of a weight loss program and additional temporary total disability benefits.

An administrative law judge correctly determined the claimant is only entitled to TTD benefits through January 6, 2023, but found the claimant is entitled to a weight loss program and additional medical treatment by her treating physician.

Ark. Code Ann. § 11-9-508(a) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

The ALJ granted the claimant additional medical treatment with Dr. Adeel Shamim and weight loss treatment through the Metabolic Research Center. However, the claimant has been diagnosed with Type 2 diabetes

with hyperglycemia since approximately 2010 and “really struggles with her weight.” She admits that while attempting to lose weight for Dr. Shamim to conduct a hernia repair, she gained ten pounds.

This has been an ongoing concern for the claimant who is “always attempting to try to lose weight.” Approximately one year prior to her on-the-job injury, the claimant visited the Metabolic Research Center but determined that their program was too expensive. Prior to her injury in 2022, the claimant had also seen a physician recommending diet pills, a dietician, and a clinic recommending weight loss surgery.

Despite her weight, Dr. Shamim performed a hernia repair without mesh on December 19, 2022. Dr. Shamim indicated that the claimant was “not optimized for a hernia repair” and performed the repair without mesh to “buy some time for her to lose weight in the future and perform a standard of care hernia repair with mesh at that time.”

However, the claimant is unsure if she wants or needs the hernia repair with mesh. The claimant has expressed concern to Dr. Shamim about the procedure and has concerns about “the mesh floating around and tearing up everything else and that kind of worries me.” She also believes that “[i]f I could lose the weight, I feel that there wouldn’t be a need for the mesh” or the second surgery at all. The medical records do not contain any current recommendation for the repair with mesh and the claimant does not know

FOSTER – H204851

how much weight she would need to lose for Dr. Shamim to perform that procedure.

The record is clear that the claimant's need for weight loss is pre-existing. She made multiple inquiries to weight loss programs prior to her injury and has made previous attempts to lose weight without success. The claimant is uncertain how much weight she would need to lose to undergo the hernia repair with mesh, but she is also not sure that she would even need the surgery if she lost weight. It is clear that the claimant's need for weight loss is not causally related to her injury or reasonable and necessary for the treatment of her injury.

Accordingly, for the reasons set forth above, I must dissent.

MICHAEL R. MAYTON, Commissioner