

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G903696

DONNA HASSELL, Employee	CLAIMANT
WALMART ASSOCIATES, INC., Employer	RESPONDENT
WALMART CLAIMS SERVICES, Carrier	RESPONDENT

OPINION FILED JUNE 7, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On May 24, 2023, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 15, 2023 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. All prior opinions are final.

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

1. Claimant's entitlement to additional medical treatment as recommended by Dr. Baird in the form of a spinal cord stimulator.

The claimant contends she is entitled to treatment recommended by her authorized treating physician, Dr. Clinton Baird, in the form of a spinal cord stimulator. Claimant reserves all other issues.

The respondents contend that Dr. Baird's proposed spinal cord stimulator trial is not reasonably necessary medical treatment in connection with the claimant's compensable injury. Indemnity benefits and attorney fees are being paid as appropriate.

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 a pre-hearing conference conducted on March 15, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to a spinal cord stimulator trial as recommended by Dr. Baird.

#### FACTUAL BACKGROUND

The claimant is a 61-year-old woman who was involved in a motor vehicle accident while working for respondent on February 4, 2019. The parties have previously stipulated that as a result of that accident claimant suffered compensable injuries to her right knee, neck, and low back. Claimant underwent surgery in the form of a fusion at the L4-5 level by Dr. Armstrong on June 4, 2019. Following that procedure claimant came under the

care of Dr. Clinton Baird in Tulsa, Oklahoma who performed a sacroiliac joint fusion on February 7, 2020. In an Opinion filed on August 12, 2020, it was determined that claimant had proven by a preponderance of the evidence that she was entitled to additional medical treatment for her low back and SI joint; including the surgery which had been performed by Dr. Baird.

Claimant has continued to treat with Dr. Baird. He recommended an anterior cervical discectomy and fusion at the C4-C7 level and performed that procedure on September 23, 2020. Following a hearing on February 24, 2021, an Opinion was filed on March 17, 2021 finding that claimant had proven by a preponderance of the evidence that she was entitled to additional medical treatment for her cervical injury which included the surgery performed by Dr. Baird.

Since that time, claimant has continued to receive medical treatment from Dr. Baird and has undergone pain management for complaints involving continued low back pain. Claimant's treatment has included injections, physical therapy, and pain medication. On December 27, 2021, Dr. Baird performed a lumbar laminectomy with L5-S1 hardware removal.

Despite claimant's most recent surgery, she has continued to complain of low back complaints. In his report of May 10, 2022, Dr. Baird recommended that claimant undergo a spinal cord stimulator trial.

Respondent has denied liability for the spinal cord stimulator trial recommended by Dr. Baird, and as a result claimant has filed this claim contending that she is entitled to additional medical treatment in the form of the spinal cord stimulator trial recommended by Dr. Baird.

## ADJUDICATION

Claimant contends that she is entitled to additional medical treatment in the form of a spinal cord stimulator trial as recommended by Dr. Baird. Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof.

As previously noted, claimant suffered an admittedly compensable injury to her low back as a result of a motor vehicle accident on February 4, 2019. Since that time, claimant has undergone extensive medical treatment for her low back. This includes a fusion at the L4-5 level by Dr. Armstrong; a sacroiliac joint fusion by Dr. Baird on February 7, 2020; and surgery to remove hardware with a lumbar laminectomy by Dr. Baird on December 27, 2021. In addition to three surgical procedures, claimant has received treatment in the form of medication, injections, and physical therapy. Despite this treatment, claimant's complaints of low back pain persist and as a result Dr. Baird has now recommended a spinal cord stimulator trial.

In connection with the spinal cord stimulator trial, claimant was referred for a psychological evaluation to determine whether she was a candidate for the spinal cord stimulator trial. Claimant was not evaluated by a local psychiatrist or psychologist, but instead participated in a videoconference examination with Dr. Maria Arizaga who is

board certified in psychiatry and addiction medicine in New Mexico. Dr. Arizaga authored a report dated January 4, 2023, indicating that claimant was a candidate for the spinal cord stimulator assessment and intervention. Notably, Dr. Arizaga performed no psychological testing on the claimant.

In response to Dr. Arizaga's report, respondent had claimant evaluated by Dr. Richard Back, a clinical neuropsychologist in Fayetteville. Dr. Back performed an in-person evaluation of the claimant and in addition administered psychological testing in the form of an MMPI-2. According to Dr. Back's report of March 28, 2023, claimant's profile from the MMPI-2 was elevated. Significantly, it was his opinion that claimant would be a poor surgical risk for pain control such as a spinal cord stimulator. Specifically, Dr. Back stated:

Ms. Hassell's Pain Assessment Index was calculated from her MMPI-2 T-score. Her scores (15.5) exceeds the cut-off of 13. Scores above 13 are associated with poor surgical results aimed at pain reduction. This formula is 93.5% accurate in identifying poor surgical risks for pain control.

Dr. Back went on to diagnose claimant's condition as Somatic Symptom Disorder due to predominant pain and recommended conservative medical intervention.

In addition, respondent had claimant undergo an evaluation by Dr. Carlos Roman. In a report dated May 15, 2023, Dr. Roman stated that a spinal cord stimulator might be an unnecessary risk and he recommended medication management. I do note that in his report Dr. Roman indicated that claimant's psychiatric evaluation showed no contraindication to the stimulator. Perhaps Dr. Roman was only aware of the report of Dr. Arizaga and not of the report and MMPI-2 results of the testing performed by Dr. Back.

Clearly, Dr. Back's report indicates that claimant is not a good candidate for pain reduction surgery.

In my opinion, the opinion of Dr. Back is entitled to greater weight than the opinion of Dr. Arizaga. First, Dr. Back performed an in-person evaluation of the claimant. On the other hand, Dr. Arizaga performed her examination by teleconference. More importantly, Dr. Back performed psychological testing in the form of an MMPI-2 while Dr. Arizaga performed no psychological testing. According to Dr. Back, claimant's MMPI-2 results indicate that she is a poor surgical risk for pain control. Based upon the test results assessed by Dr. Back, which I find to be credible and entitled to great weight, I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a spinal cord stimulator trial as recommended by Dr. Baird.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a spinal cord stimulator trial as recommended by Dr. Baird. Therefore, her claim for additional compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$410.00.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE