BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H104834**

KELLI S. HELLUMS, EMPLOYEE CLAIMANT

AREA AGENCY ON AGING WESTERN ARKANSAS, EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER RESPONDENT

OPINION FILED **NOVEMBER 21, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

On October 14, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 22, 2024, 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 this claim.

2. The employee/employer/carrier relationship existed on August 6, 2020, when claimant sustained a compensable injury to her lower back.

3. Claimant's compensation rate is $268.00 for temporary total disability and $201.00 for permanent partial disability.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing

were limited to the following:

1. Whether claimant is entitled to additional medical benefits.

All other issues are reserved by the parties.

The claimant contends that "She received a compensable injury to her low back on August 6, 2020, when she was helping a patient get dressed and felt a sharp shooting pain in her low back. The claimant followed up with Dr. Ian Cheyne at Mercy Clinic Occupational Medicine for continued low back pain. The claimant was referred for pain management and lumbar injections. On August 19, 2020, the claimant received an MRI of her lumbar spine and referred for additional pain management. The claimant was treated and evaluated at Ortho Arkansas for her continued low back pain."

The respondents contend that "All appropriate benefits were paid with regard to claimant's injury sustained on August 6, 2020. She was found to be at maximum medical improvement with a 0% rating assigned on April 21, 2021. The medical records do not support entitlement to indemnity benefits, and additional medical treatment is not reasonable and necessary."

From a review of the entire record including 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 August 22, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proving that she is entitled to additional medical treatment for her compensable back injury of August 20, 2020.

FACTUAL BACKGROUND

This case has a lengthy procedural history. On August 8, 2022, claimant filed Form AR-C, alleging a compensable injury on August 6, 2020. Because the AR-C was filed two days after the two-year anniversary of the injury, respondents took the position that the matter was barred by the statute of limitations and sought to have the matter dismissed as untimely. I denied that motion, ruling that since August 6, 2022, was a Saturday, the filing on August 8, 2022, was timely. Claimant filed a motion to enforce a proposed joint petition agreement between the parties. I denied both motions, and an order to that effect was entered on April 6, 2023. Respondents filed a timely appeal of the statute of limitations decision on May 4, 2023. On February 14, 2024, the Full Commission affirmed that ruling.

On March 15, 2024, respondents filed a Motion to Dismiss pursuant to A.C.A. § 11-9-702, alleging that it had been more than six months since claimant filed her Form AR-C with the Commission, but there had been no request for a hearing during that time. Respondents also requested dismissal for failing to prosecute her claim pursuant to Commission Rule 099.13. Claimant opposed the dismissal and a hearing on respondents' motion was conducted on June 5, 2024. The Motion to Dismiss was denied and an order to that effect was entered on June 20, 2024.

HEARING TESTIMONY

Claimant was the only witness that testified. She said that on August 6, 2020, she was working for the Area Agency on Aging as an in-home aide. She had been assigned to a particular patient and had been for about five years. On the day in question, claimant was assisting the patient to put on her shoes when "it just felt like something on my left side completely separated and I went straight down and was just stuck in a fetal position." She was taken to the emergency room in Fort Smith where she was treated and released. About a week later she was again seen in the emergency room after she was unable to get out of her car at Dr. Ian Cheyne's office.

Dr. Cheyne prescribed a course of physical therapy, which claimant said made her condition worse. Following the failed physical therapy, claimant had lumbar epidural steroid injections (LESI), which seemed to help. Claimant said she had a total of three LESIs which provided some relief, and then had a facet injection which did not work as well. Claimant said while she was being treated that she had physical restrictions that prevented her from lifting or bending. Claimant also had a rhizotomy which did not help.

Claimant said that she had a functional capacity evaluation (FCE) in April 2021. After the FCE, claimant understood that she did not have the option to return to see Dr. Roman. Claimant testified that after she had worked almost a year in the office at Area Agency on Aging, she was told that she could not go back into the field and that she was fired.

When she was terminated, claimant lost her health insurance and was not able to treat with her physicians because they wanted to be paid cash. Claimant applied for and received Social Security Disability benefits and after she was approved for that, she returned to see Dr. Roman and was given another LESI. Claimant is now enrolled in Medicaid which paid for Dr. Roman's services.

On cross-examination, claimant said she was initially scared to do the injections but was referred to Drs. Roman and Becker for pain management and had several injections. Claimant said no doctor had discussed surgery with her during the course of her treatment. Claimant clarified that she was on Medicaid not Medicare.

On redirect examination, claimant testified about the sequence of her medical treatment, which will be covered in the review of the records.

I found claimant to be a credible witness, both in her demeanor and in the consistency of her testimony with the medical records.

REVIEW OF THE EXHIBITS

On the day of her injury, claimant first went to Mercy Hospital in Fort Smith for an emergency room visit for low back pain. She was discharged with the following summary statement:

> "Consulted neurosurgery, CT showed no acute fracture or misalignment. Patient discharged with Medrol and Plex real. She will follow up with neurosurgery next week."

However, instead of being seen by a neurosurgeon, respondent sent claimant to Dr. Ian Cheyne at Mercy Clinic Occupational Medicine. Dr. Cheyne examined claimant made an appointment for an MRI for the lumbar spine and prescribed a complete steroid pack to be followed by Ibuprofen or Tylenol afterwards. Dr. Cheyne's initial assessment was that claimant's work activities had aggravated an underlying condition. Claimant's work status as of August 10, 2020, was restricted duty of lifting less than 20 pounds and limited bending, stooping, and twisting. Claimant was to alternate sitting, standing, and walking as tolerated.

Claimant had an MRI on August 19, 2020, as ordered by Dr. Cheyne. The impressions of this MRI were:

> Facet hypertrophy L5-S1 with far-right sided disc protrusion but no significant stenosis.
> Posterior element hypertrophy L4-5 with spondylosis and posterior lateral small protrusions with canal and lateral recess stenosis.
> Posterior element hypertrophy L3-L4 with disc bulge verses protrusion and mild canal and lateral recess narrowing.
> And central disc protrusion at L2-3 with mid left lateral recessed narrowing.
> Other findings are noted.

When claimant next saw Dr. Cheyne on August 24, 2020, she felt that she had improved and was no longer having to use a walker to get around. Dr. Cheyne went over her MRI results and continued her work restrictions as before.

While there is no physical therapy records included in the exhibits, Dr. Cheyne referred

claimant to physical therapy and in his notes of September 14, 2020, noted that his plan of care was to send her for more physical therapy and at that point, he was considering pain management for possible injections if her pain was not resolved. His diagnosis at that time was that she had "strain of muscle, facia and tendon of lower back." Her work restrictions continued as before.

Claimant returned to see Dr. Cheyne on October 5, 2020. While claimant said that she felt her back was improving, she gave her pain level at a five, as opposed to previous entries of four on a scale of ten. Under his plan of care comments, Dr. Cheyne said there has been no significant improvement and that he was going to try another round of oral steroids. He discussed a possible referral to pain management or a functional capacity evaluation, and claimant wanted to consider her options. When she returned on October 12, 2020, claimant decided to try the LESI. Dr. Cheyne made a referral to pain management for that and continued her work status of restricted duty.

On October 20, 2020, claimant saw Dr. Eugene Becker at Central Arkansas Surgery Center and underwent a lumber epidural steroid injection at L5-S1. Upon returning to see Dr. Cheyne on November 5, 2020, claimant reported she had significant improvement of pain after the LESI. Dr. Cheyne recorded "Will place on regular duty but recommend she follow up with pain management for another injection."

Claimant had another LESI at L5-S1 on November 17, 2020. She returned to see Dr. Cheyne on November 30, 2020, and reported that she felt she was not improving. Claimant also reported that she felt no change after the second LESI. The plan of care after that visit was claimant was placed on her original restrictions, with office work recommended; however, the recommended work status in that report was contradictory: "Kelli's recommended work status is regular duty." She was to return to Dr. Becker for more pain management.

On December 15, 2020, claimant had a transforaminal lumbar epidural steroid injection at

bilateral L4-5. She returned to see Dr. Cheyne on January 20, 2021, reporting a pain level of four after her third LESI. She had not yet been released by pain management and Dr. Cheyne recommended left facet injections at L3-S1. He then included in the plan of care: "consider FCE if no improvement with injections."

On February 8, 2021, claimant was seen at OrthoArkansas prior to receiving facet injections at L3-S1. Claimant related that to that point, she had undergone three LESIs from Dr. Becker, had undergone physical therapy which exacerbated her symptoms, and had tried muscle relaxers, anti-inflammatories, and steroids dosepaks with minimal relief. On February 12, 2021, Dr. Carlos Roman administered lumbar facet injections at L3-4, L4-L5, L5-S1, with medial branch block. She underwent a second facet injection by Dr. Roman on February 26, 2021. This was followed by a rhizotomy of lumber facet joints on claimant's left side at L3-L4, L4-L5, and L5-S1 on March 19, 2021.

On April 21, 2021, claimant was seen by physician's assistant Payton Ransom at OrthoArkansas who returned claimant to work at light duty until a functional capacity evaluation was done. There was as entry in P.A. Ransom's report as follows:

> "The patient states she is unable to return to work due to her pain. My recommendation is for a functional capacity exam. If the patient has a valid functional capacity exam, then they may be able to return to work per the defined restrictions of that valid functional capacity exam. If the functional capacity exam is invalid, patient may return to work full duty without restrictions.
> I will continue patient's work restrictions of no bending, twisting, or lifting over twenty pounds until the result of functional capacity exams are available. There is no need for the patient to follow up after this functional capacity exam. My instructions following the functional capacity exam are clearly stated above."

On this visit, P.A. Ransom stated:

> "Patient is at maximum medical improvement. Patient's work restrictions are to return back to work full duty without restrictions. Patient's impairment rating will be 0% as taken out of page 113 of the Guides to Evaluation of Permanent Impairment,4th Edition. This is for a grade one degenerative

> spondylolisthesis, non-operated on. Releasing patient from my medical care. I will see the patient back only as needed. Continued to place the patient on work restrictions no bending, twisting, or lifting over twenty pounds."

Claimant underwent a functional capacity evaluation on May 10, 2021, during which time she put forth a reliable effort with 50 of 50 consistency measures. The examiner concluded that claimant completed the functional testing with reliable results and demonstrated the ability to perform work in a light classification of work.

ADJUDICATION

The only issue to be decided in this matter is whether claimant is entitled to additional medical treatment for her compensable injury of August 20, 2020. A claimant bears the burden of proving entitlement to additional medical treatment for a compensable injury. *LVL, Inc. v. Ragsdale*, 2011 Ark. App. 144, 381 S.W.3d 869. However, once it has been established that a claimant has sustained a compensable injury--which was a stipulation--she is not required to offer objective medical evidence to prove entitlement to additional benefits, *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, at 9, 558. S.W.3d 408, 414.

It is the employer's responsibility to provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee, Ark. Code Ann. 11-9-508(a). While the doctor that saw claimant at the emergency room believed she needed to be referred to neurosurgery, I do not fault respondents for first sending her to the occupational medical clinic. Nor am I critical of the conservative course of care that claimant received in the first months; the initial course of rest, Ibuprofen, Acetaminophen, and hot showers seems reasonable, as does the referral to physical therapy and then for the various injections.

However, after those conservative measures failed, the records from Dr. Cheyne and P.A. Ransom do not indicate that a referral to an orthopedist or a neurosurgeon was ever contemplated.

As noted above, the doctor that saw claimant in the emergency room on the day of the accident thought such was appropriate; however, that was before respondent began management of her care. Assuming for a moment that the release with restrictions after the FCE was appropriate[1], that would not bar claimant from additional medical treatment. An injured party can continue to receive medical treatment for a compensable injury after she has been declared to have reach maximum medical improvement, *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). In this hearing, claimant sought the only type of treatment that has provided her with relief from her back pain. As such, I find that claimant have proven by a preponderance of the evidence that she is entitled to continued treatment for her compensable back injury.

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of $452.95.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE

[1] The question of whether claimant should have been released by a physician's assistant at maximum medical improvement with permanent physical restrictions but with a 0% impairment rating is not before me at this time, and I offer no opinion in that regard.