

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H006000

AMANDA INGRAM, Employee	CLAIMANT
FRANKLIN CO. JUDGE, Employer	RESPONDENT
ASSOCIATION OF ARKANSAS COUNTIES WCT, Carrier	RESPONDENT

OPINION FILED DECEMBER 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.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 22, 2021, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 15, 2021 and an amended 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 among the parties on July 28, 2020.
3. The claimant sustained a compensable injury to her back on July 28, 2020.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$556.00 for total disability benefits and \$417.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to payment of additional temporary total disability benefits from date stopped in July 2021 through a date yet to be determined.
2. Claimant's entitlement to prescriptions at the pharmacy of her choosing.
3. Attorney's fee.

The claimant contends she is entitled to additional compensation including, but not limited to, temporary total disability benefits from when they were stopped in July of 2021 until a date yet to be determined. Claimant further contends that she is entitled to fill prescriptions at any pharmacy that is willing to provide prescriptions at the appropriate workers' compensation rate. The claimant contends that her attorney is entitled to an attorney's fee. All other issues are reserved.

The respondents contend the claimant had some spasms at the start of her claim, and has no other objective medical findings. Dr. Blankenship has kept her off work for a year and has suggested no treatment that will improve her condition. On July 22, 2021, he stated that she got 100% relief from an injection and that x-rays showed no fracture or malalignment. All tests and the inspection of the lumbar spine were negative. He stated that he only needed to see the claimant on an as needed basis. The claimant is at MMI and there is no permanent partial disability. Respondents contend claimant can choose any pharmacy as long as that pharmacy will take the respondent's prescription card and fill the prescriptions at that cost.

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 September 15, 2021 and contained in an amended pre-hearing order filed October 21, 2021 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 temporary total disability benefits beginning the date those benefits were last paid in July 2021 and continuing through a date yet to be determined.

3. Claimant has failed to prove by a preponderance of the evidence that prescriptions filled by IWP are reasonable. Carlisle Medical is hereby recognized as the authorized prescription provider.

4. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant worked for respondent as a paramedic. She had a prior injury to her low back which resulted in a lumbar fusion at the L5-S1 level by Dr. Blankenship. After that surgery, claimant returned to work for respondent and continued working until July 28, 2020, when she suffered an admittedly compensable injury to her thoracic spine while helping move an extremely large patient. Claimant initially received medical treatment

for this injury from Dr. Westbrook who prescribed physical therapy. Dr. Westbrook also ordered a MRI scan which was read as normal. When claimant's condition did not improve, he referred claimant to Dr. Blankenship.

Claimant's initial evaluation with Dr. Blankenship occurred on October 5, 2020. He noted that physical therapy had not helped the claimant's condition and that his review of the MRI scan did not reveal any neural impingement or disc protrusions. He did note that there were some mild disc space changes present. Dr. Blankenship recommended medication as well as a referral to Dr. Cannon for an injection and continued physical therapy. He also indicated that claimant should be off work at that time.

Claimant apparently underwent trigger point injections by Dr. Cannon in November 2020 and returned to Dr. Blankenship on November 19, 2020. Dr. Blankenship noted that claimant's physical therapy had been exhausted and he recommended that claimant continue her physical therapy and return in six weeks. The documentary evidence indicates that claimant underwent a second MRI scan of her thoracic spine on June 10, 2021, which was also read as normal. Claimant returned to Dr. Blankenship on July 22, 2021, following facet injections by Dr. Cannon. Dr. Blankenship noted that the injections provided claimant almost 100% relief and he indicated that claimant might continue to need intermittent facet injections in the future. He indicated that claimant did not need to go through his office to get additional facet injections, but instead she should contact Dr. Cannon's office directly.

In an addendum to the July 22, 2021 report, Dr. Blankenship indicated that he informed claimant that a facet rhizotomy would not be unreasonable if her pain returned; however, he would leave that decision to Dr. Cannon.

Following this visit with Dr. Blankenship, respondent ceased paying temporary total disability benefits. Claimant again returned to see Dr. Blankenship on September 9, 2021, and he noted that claimant's pain was worsening. He stated that claimant was going to need multiple injections as well as possible rhizotomies and long term treatment. He recommended that claimant return to Dr. Cannon to consider a thoracic rhizotomy and indicated that claimant should return to see him in three months.

Claimant has filed this claim contending that she is entitled to additional temporary total disability benefits from the date those benefits were last paid in July 2021 and continuing through a date yet to be determined. She also contends that she is entitled to receive prescription medication from the pharmacy of her own choosing.

#### ADJUDICATION

Claimant contends that she is entitled to additional temporary total disability benefits from the date those benefits were last paid by respondent in July 2021 and continuing through a date yet to be determined. In order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning from the date those benefits were last paid by respondent in July 2021 and continuing through a date yet to be determined.

I find that claimant has proven that she remains within her healing period and that she continues to suffer a total incapacity to earn wages. Apparently, the respondent ceased paying temporary total disability benefits following Dr. Blankenship's evaluation of the claimant on July 22, 2021. In his report of that date, he does indicate that he would see claimant on an as-needed basis, and that if she needed additional facet injections she should contact Dr. Cannon's office. While Dr. Blankenship's medical report does indicate that he would see claimant on an as-needed basis, his medical report also contains an addendum regarding claimant's ability to return to work:

As far as return to work, it is too early for us to really get a good idea of where she is headed. Dr. Cannon has already advised her that he thinks it is unlikely that returning to being a paramedic is a good idea and I have told her that the only reason I am even considering saying it might be okay is the fact that she is so passionate about it, is so good at it, and did so well after her lower back surgery. She is going to spend the next eight weeks getting more active with her exercises and then we are going to see how she is doing. When I see her back we will also rate her and see how she is doing.

Although Dr. Blankenship did indicate that he would see claimant on an as-needed basis, he also indicated that claimant would return to see him in eight weeks at which time he would see how the claimant was doing. Just as importantly, Dr. Blankenship authored a letter dated July 22, 2021 which stated: "Patient needs to remain off work until further notice." (Cl.'s Exh., Page 92)

Dr. Blankenship reiterated that claimant had not reached maximum medical improvement and that she should remain off work at the time of his evaluation on September 9, 2021. In his report of that date, Dr. Blankenship initially noted that claimant

stated that her pain had worsened and was about the same as it was before her injection. Dr. Blankenship specifically stated that claimant had not reached maximum medical improvement and he recommended that claimant return to see Dr. Cannon for consideration of a thoracic rhizotomy. On that date, Dr. Blankenship again wrote a letter stating that claimant needed to remain off work until her follow-up appointment on December 9, 2021.

In response to Dr. Blankenship's recommendations, respondent had claimant evaluated by Dr. Jared Seale on October 20, 2021. Notably, Dr. Seale did not indicate that claimant had reached maximum medical improvement at that date, but instead recommended that claimant undergo a CT scan of her thoracic spine. He also recommended that claimant follow up with either he or Dr. Blankenship after the CT scan to evaluate the spinous processes. He also recommended that claimant follow through with the rhizotomy with Dr. Cannon. Significantly, he noted that although objective testing was negative, claimant's examination was believable and he specifically stated that her subjective pain complaints were accurate. Dr. Seale did indicate that he was placing the claimant on work restrictions of no bending, twisting, or lifting over 20 pounds until she reached maximum medical improvement.

Claimant underwent the CT scan of her thoracic spine on November 16, 2021, and it was interpreted as normal. In an addendum to his original report, Dr. Seale stated that he reviewed claimant's CT scan of her thoracic spine and did not see any acute sign of injury. As a result, he placed claimant at maximum medical improvement after her rhizotomies were completed and assigned her a 0% impairment rating.

I find that the opinion of Dr. Blankenship is entitled to greater weight than that of Dr. Seale. First, Dr. Blankenship has treated the claimant since the time of her first back complaints in 2013. Recently, Dr. Blankenship has treated claimant with medication and has recommended injections with Dr. Cannon. Notably, even Dr. Seale in his most recent addendum indicated that claimant should complete that treatment with Dr. Cannon. Furthermore, as previously noted, Dr. Seale was of the opinion that claimant's complaints were accurate. Dr. Blankenship has opined that claimant remains within her healing period and he has taken claimant off work through at least December 9, 2021. I find that the opinion of Dr. Blankenship is credible and entitled to great weight.

Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning from the date those benefits were last paid in July 2021 and continuing through a date yet to be determined.

The final issue for consideration involves the dispensing pharmacy for claimant's prescription medication. Claimant testified that after her initial injury she requested a pharmacy card from the respondent but one was not provided. As a result, claimant was forced to pay for prescriptions and get reimbursement from the respondent. Through the efforts of her attorney, claimant began receiving prescription medication from IWP (Injured Workers' Pharmacy). Claimant testified that IWP has been prompt in filling her prescriptions and she is satisfied with their services. She testified that she would prefer to have her prescriptions filled by IWP.

Respondent has provided claimant with a pharmacy card from Carlisle Medical which is to be used to purchase prescriptions directly from a pharmacy which in turn would



bill respondent directly. According to respondent's counsel, Carlisle Medical is a recognized provider under the Commission's drug formulary of Rule 41.

Claimant contends that she is entitled to use the pharmacy of her own choosing. However, for any medical service provided in a workers' compensation claim, that service must be considered reasonable and necessary. Respondent submitted into evidence a copy of a charge for one of claimant's prescriptions in the form of Celecoxib. The billed charges by IWP were \$194.04. Respondent also submitted into evidence a document from Carlisle Medical indicating that its charge for that same prescription would be \$91.30, less than half the cost. I do not find that payment of prescription medication at a higher cost is reasonable based upon the evidence presented. Therefore, I find that claimant has failed to prove by a preponderance of the evidence that prescriptions filled by IWP are reasonable. Carlisle Medical is hereby recognized as the authorized prescription provider for claimant.

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning the date those benefits were last paid in July 2021 and continuing through a date yet to be determined. Claimant has failed to prove by a preponderance of the evidence that her prescription medication should be filled by IWP. Instead, Carlisle Medical is hereby recognized as the authorized prescription provider for claimant.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the

claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

The respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$413.40.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE