

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H006000

AMANDA INGRAM,
EMPLOYEE

CLAIMANT

FRANKLIN COUNTY JUDGE,
EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT SERVICES,
CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 4, 2022

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

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

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals a decision of the Administrative Law Judge filed on December 14, 2021. The Administrative Law Judge found that the 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 and that the claimant has failed to prove by a preponderance of the

evidence that prescriptions filled by IWP are reasonable. The ALJ also found that Carlisle Medical is the authorized prescription provider. After our *de novo* review of the entire record, the Full Commission finds the claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from when they were stopped in July of 2021 and continuing to a date yet to be determined; and that the prescriptions filled by IWP prior to the November 22, 2021 hearing are reasonable and necessary.

I. HISTORY

On July 28, 2020, the claimant was working for the respondent-employer as a paramedic. According to the claimant, the accident occurred in the following manner:

Q Thank you. Will you briefly explain how you got hurt in July of 2020.

A I am a paramedic and we had a patient, a call for chest pain, and we got there. And it's a patient that we normally deal with and he normally walks outside. He could not walk outside that day, so we had to put him on the stretcher and he is approximately 600 pounds.

The wheelchair ramp is broken and shabby, kind of leaning like, you know, had holes and stuff in it. And there was [sic] three people: There was me, my paramedic partner, and a first responder with me and the first responder at the foot end of the cot and just one person at the top.

So we started bring him down the ramp. Me and the first responder are trying to push – hold the

weight so it wouldn't roll back on over the top of us and trying to keep him stable. As we were getting closer to the bottom of the ramp, I thought it was going to tilt, tip over. And I mean the load was so heavy my boots – both of our boots were sliding down the ramp and I jumped over the side to try to keep it from falling and I mean that's just – I mean –

Q And you sustained an injury?

A Yes, sir.

Q To what part of your body?

A To my mid back.

The claimant was initially treated at Westbrook Medical Clinic.

However, at her follow up visit, Dr. Westbrook referred the claimant to Dr. James Blankenship for further evaluation. The claimant had previously been treated by Dr. Blankenship and underwent an anterior lumbar fusion while under his care in 2013.

The claimant returned to see Dr. Blankenship on October 5, 2020. After examining the claimant and reviewing her MRI, Dr. Blankenship noted the following recommendations:

REFER TO:

Cannon, David ...

I recommend we get her set up with a home E-Stim unit. I have also recommended that she discontinue her methocarbamol and we start her on Celebrex and Lyrica at 75 mg twice a day. I told her we need to get her in to see Dr. David Cannon for consideration of an injection. I am not sure what Dr. Cannon will want to start with but I think a more localized injection makes

more sense given the fact that her MRI does not demonstrate any significant disc space pathology. I have recommended she continue with her physical therapy and see me back in six weeks. I told her to call us if this is not improving but I told her the good news is I do not see anything pathological on her MRI. The bad news is that somebody like her does not work because of pain. I know she is hurting bad. She went back to work four weeks postop after a two-level ALIF. I told her that I do think there is a good chance that she will get back to baseline.

At the time of this visit, the claimant was off work and Dr.

Blankenship indicated that he would see her back in six weeks and assess whether she was able to return to work at that point.

The claimant returned to see Dr. Blankenship on November 19, 2021. Dr. Blankenship's records from this visit indicated the following:

Impression:

Ms. Ingram got her trigger point injections and was doing better with physical therapy, and then they discontinued paying for it.

Recommendations:

I have recommended that she get back in doing physical therapy and then return to see us in six weeks. Again, I do not feel like there is anything surgically that can be done for her, but that does not mean that there is not something going on with her. I recommend that we continue her medications, that she stay off work until she gets a good course of physical therapy.

Unfortunately, it would have been better to have done this right after her trigger point injections and we may want to injection them again if she is not making the progress she was initially with her therapy ...

Dr. Blankenship saw the claimant again on July 22, 2021 and noted that the claimant had a facet injection “from which she got near 100% relief”. Regarding the claimant returning to work, Dr. Blankenship noted:

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.

By letter dated July 22, 2021, Dr. Blankenship indicated that the claimant needs to remain off work until further notice.

The claimant returned to see Dr. Blankenship on September 9, 2021. In his medical records from that visit, Dr. Blankenship clarified that the claimant was not at maximum medical improvement. According to Dr. Blankenship’s record, “[t]he bottom line is that she, with this new injury, is going to need multiple different injections, possible rhizotomies, and long-term treatment for this and she in no way is at MMI”. Additionally, Dr. Blankenship indicated by letter dated September 9, 2021, that the claimant “needs to remain off work until follow up appointment on 12-9-21”.

An Amended Pre-hearing Order was filed on October 21, 2021. “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.”

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.

All other issues were reserved.

After a hearing, an Administrative Law Judge filed an opinion on February 12, 2021. The Administrative Law Judge found:

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.

Respondents appeal these findings to the Full Commission.

II. ADJUDICATION

A. Additional Temporary Total Disability Benefits

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. *Ark. State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Breshears, supra*; *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

The claimant sustained an unscheduled compensable injury on July 28, 2020. Dr. Blankenship's most recent work excuse excused the claimant from work "until her follow up appointment on 12-9-21". Thus, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from when they were stopped in July of 2021 and continuing to a date yet to be determined. We also find that the claimant's attorney is entitled to a controverted attorney's fees payable as a result of the awarding of these benefits.

B. Pharmacy Choice

Ark. Code Ann. §11-9-508(a) provides the following:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

The claimant's prescription for Celecoxib was being filled at IWP at a cost of \$194.04; whereas, this same prescription costs \$91.30 to be filled by Carlisle Medical. Having the prescription filled by IWP in the future is not reasonable given the additional cost as compared to the cost of having the prescription filled by Carlisle Medical. Therefore, the Full Commission finds that the claimant has failed to prove by a preponderance of the evidence that continuing to have this prescription filled by IWP is reasonable.

However, we find that the prescriptions filled by IWP prior to the hearing held on this issue on November 22, 2021 are reasonably necessary. The claimant was prescribed Celecoxib and Lyrica in connection with her compensable injury. The claimant began filling these prescriptions at a local pharmacy, paying out-of-pocket for the prescriptions, and being reimbursed for the expense. However, this cost became too much for the claimant to continue paying. The claimant testified that the insurance adjuster indicated that she would be provided a prescription

charge card to cover the cost of her prescriptions; however, the claimant did not receive this card.

By letters dated June 4, 2021 and June 15, 2021, claimant's attorney requested a prescription card, that the respondents arrange for the pharmacy to directly bill the respondents, or provide some other method for the claimant to receive her prescriptions without the out-of-pocket expense. The respondents failed to respond to these requests.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from the date they were stopped in July of 2021 and continuing to a date yet to be determined. We further find that the prescriptions for Celecoxib and Lyrica filed by IWP prior to the hearing are reasonably necessary, but that the claimant failed to prove by a preponderance of the evidence that having her prescription for Celecoxib and Lyrica filled by IWP in the future is reasonable. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (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

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner