BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G801538

JAROD MEDART, Employee	CLAIMANT
UNIVERSITY OF ARKANSAS FAYETTEVILLE, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT

OPINION FILED MAY 2, 2023

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by AARON L. MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by CHARLES H. MCLEMORE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 7, 2023, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 5, 2022, and a Pre-hearing Order was filed on December 6, 2022. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 relationship of employee-employer-carrier existed between the parties on April 4, 2016.

3. The claimant sustained a compensable injury to his low back on April 4, 2016.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of $551.00 for temporary total disability benefits and $413.00 for permanent partial disability benefits.

5. All prior opinions are final and *res judicata*.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to additional medical treatment in the form of a trial spinal cord stimulator as recommended by Dr. Jared Ennis for his compensable low back injury.

Claimant's contentions are:

> "The Claimant contends that the recommended trial spinal cord stimulator for his lower back is reasonable and necessary."

Respondents' contentions are:

> "A hearing was held in this matter on February 19, 2019, and on April 23, 2019. The issue to litigate at that time was the claimant's demands for additional medical treatment, which became a demand for a surgery performed by Dr. Brandon Evans at L5-S1 on February 21, 2019. The hearings resulting in an opinion of the Administrative Law Judge dated July 22, 2019, which was affirmed and adopted by the Full Commission on January 14, 2020, awarding the claimant additional medical treatment including the surgery by Dr. Evans, and this opinion is now the law of the case and res judicata. The Respondents have paid the awarded benefits, including providing medical treatment for the claimant reasonable and necessary for and causally related to the compensable injury.
>
> The claimant continued to complain of symptoms after his fusion surgery and has been provided additional medical treatment by Respondent. The claimant was provided another surgery by Dr. Evans on May 6, 2021, to remove hardware. The claimant has been provided ongoing pain management and injections. Respondent does not pay for the claimant's cannabis.
>
> The claimant now demands that he be provided a spinal cord stimulator, which Respondent has not authorized. The claimant was seen by Dr. Carlos Roman who did not recommend the spinal

> cord stimulator for the claimant but did recommend medications which Respondent has continued to provide this claimant. Respondent contends that the spinal cord stimulator the claimant demands is not reasonable and necessary medical treatment for the claimant's injury.
>
> The Respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery."

The claimant in this matter is a 36-year-old male who sustained a compensable injury to his low back on April 4, 2016. The claimant has asked the Commission to consider whether he is entitled to additional medical treatment in the form of a trial spinal cord stimulator as recommended by Dr. Jared Ennis for his compensable low back injury. The claimant has undergone two lower back surgeries due to his compensable low back injury. The first surgery was done in February of 2019, which primarily involved a fusion of L5-S1. It should be noted that Dr. D. Luke Knox was, and still is, the claimant's treating neurosurgeon; however, Dr. Knox stopped performing surgery prior to the claimant's February 2019 surgery. Dr. Brandon Evans actually performed the claimant's surgical intervention. The claimant continued to treat with Dr. Knox after his surgical intervention. That surgical intervention is well documented in the previous hearing transcripts which has been made part of the record in this matter.

The claimant was asked about his February of 2019 surgery and its outcome on direct examination as follows:

> Q Okay. Mr. Medart, we are here today to address additional medical treatment in your case, specifically a trial for a spinal cord stimulator. We submitted a lot of medical records so I want to go back, and I don't want to detail everything, but you had a surgery in February of 2019. Do you recall that procedure?
>
> A I do.

> Q Did you get any benefit from that procedure?
>
> A I did.
>
> Q Tell me about that.
>
> A We had the surgery to fuse my L5-S1 and the benefit that I got from that, my back would no longer go out so that I couldn't walk for several days. But then approximately three months afterwards, the majority of the benefit had worn off and I started having symptoms going down the back of my legs.

Following the claimant's first surgical intervention, the claimant began physical therapy at Total Spine. The claimant continued with complaints of low back pain and lumbar radiculopathy. The claimant began treatment at Interventional Pain Specialists with both Dr. Jarod Ennis and Dr. Jason Holt. This treatment included lumbar spine injections to treat the claimant's continued low back symptoms. In December of 2019 the claimant again attended physical therapy for his low back symptoms. The claimant's difficulties continued into early 2020 even after physical therapy and receiving additional epidural steroid injections located in different areas of his lower lumbar spine.

An MRI of the claimant's lower back was ordered by Dr. Knox. After that MRI was performed, the claimant was seen by Dr. Knox on August 20, 2020. Following is a portion of that medical record:

> August 20, 2020 reviewed patient's MRI scan. Appears to show a nice decompression at the fusion site. Would not recommend any other surgical endeavors at this time will plan to follow up in 6 months. We discussed possibility of hardware removal at 2 years postop which would take him to February 2021 will plan follow-up in 6 months. Will send prescription for orthopedic bed issues/refer to note May 19, 2020 patient now 15 months status post lumbar fusion now with complaints of cauda equina syndrome would recommend that he get MRI scan return to clinic reviewed his MRI scan back and September demonstrating no evidence of compressive pathology will plan to follow up after the MRI scan

> December 2, 2019. Patient improving with shoe inserts and medications. He failed epidurals. Informed him that the next step is to consider for RF lesion will plan to follow up in 6 months and redo x-rays at that time.

The claimant then continued treating with Dr. Ennis and Dr. Holt. On September 11, 2020, Dr. Holt first indicated that the claimant "may consider SCS trial in the future." This is the first time in the medical record that a spinal cord stimulator trial appears to be considered. On May 6, 2021, the claimant goes forward with hardware removal again at the hands of Dr. Evans, but the claimant remains under the care and treatment of Dr. Knox who no longer performs surgery. The claimant was asked on direct examination about the effects of his second surgery in the form of hardware removal as follows:

> Q Okay. And the records show you had a surgery again on May 6th of '21 to remove that hardware. Did you get any benefit from that procedure?
>
> A Short-lived. It was about three months again that I got benefit from that before the pain started coming back.

On July 22, 2021, the claimant was again seen by Dr. Ennis regarding his continued low back difficulties. Following is a portion of that medical record in which it discusses recommended steps prior to considering a spinal cord stimulator trial:

> Diagnosis:
>
> ***
>
> Pleasant gentleman presents for evaluation and treatment of his worsening lower back pain. H/o pain since 2016 which has continued to worsen. Severe exacerbation of pain d/t a lifting injury while at work in April 2016. He has completed x2 series w/Yumang Rehab and injections. Ultimately underwent L5 S1 fusion w/Dr. Evans in February 2019. Successful surgery and pain free for several months; but reports residual/worsening symptoms. MRI L/S (July 2020) showing dorsal fusion of S1 and L5 vertebrae. L5/S1 level mild degenerative endplate change. Minimal bilateral neural foraminal stenosis.

> Pt presents today for follow up. Underwent hardware removal w/Dr. Evans on 05/06/21. Experienced 1 week of relief following surgery, unfortunately since then radiating pain has returned. On exam, describing a B/L S1 pain pattern. He did visit w/Dr. Knox and discussed SCS; per patient Dr. Knox recommended re-trialing injection prior to consider SCS. I agree. Added Lyrica 50mg BID which has offered some improvement. Otherwise continues w/HCD and baclofen to QID to offer 20mg dosing once daily. As well as Lyrica 75mg BID. Otherwise, will obtain approval for bilateral S1 LTF.

The claimant continued with injections as recommended by Dr. Ennis and Dr. Knox.

On October 21, 2021, the claimant was seen by Dr. Ennis. Following is a portion of that medical report:

> History of Present Illness:
> Painful area(s): back, buttock, thighs
> Progress in treatment: return to baseline
> Pain description: low back w/< radiation to b/l gluteals and posterior thighs
> Recent intervention: bilateral S1 LTF
> Results of treatment: inadequate relief
> Amount of relief: no relief
> Average activity level since last visit: unchanged
>
> Jarod returns today for further evaluation. No benefit from repeat bilateral S1 LTF. His symptoms have returned to baseline. Continues to struggle w/lower back, b/l glute and posterior thigh pain. He did visit w/Dr. Knox who also agreed w/completion of series and consider SCS if lackluster. No medication changes.
>
> ***
>
> Diagnosis:
> M96.1 – POSTLAMINECTOMY SYNDROME, NOT ELSEWHERE CLASSIFIED
> M51.16 – INTERVERTEBRAL DISC DISORDERS W RADICULOPATHY, LUMBA
> M48.062 – SPINAL STENOSIS, LUMBAR REGION WITH NEUROGENIC CLAUD
>
> Pleasant gentleman presents for evaluation and treatment of his worsening lower back pain. H/o pain since 2016 which has continued to worsen. Severe exacerbation of pain d/t a lifting

> injury while at work in April 2016. He has completed x2 series w/Yumang Rehab and injections. Ultimately underwent L5 S1 fusion w/Dr. Evans in February 2019. Successful surgery and pain free for several months; but report residual/worsening symptoms. MRI L/S (July 2020) showing dorsal fusion of S1 and L5 vertebrae. L5/S1 level mild degenerative endplate change. Minimal bilateral neural foraminal stenosis. Underwent hardware removal w/Dr. Evans on 05/06/21. Experienced 1 week of relief following surgery, unfortunately since then radiating pain has returned.
>
> Returns today for cont'd evaluation. Unfortunately no benefit from repeat b/l S1 LTF. Pain has returned to baseline. Continues to struggle w/back and b/l glute and posterior leg pain to the knees. Describing a S1 pattern. He did visit w/Dr. Knox; per patient agreed to finish out series was appropriate. As well as SCS if series lackluster. Would like to obtain new MRI prior to this step. He remains on HCD, baclofen, and Lyrica. Completing HEP/walking at local park for exercise. Discussed his cont'd pain/symptoms, and would like to change approach to caudal. Will plan to evaluate following. If no benefit, will proceed w/new MRI and if appropriate and Dr. Knox agrees; will move to SCS trial.

The claimant underwent the recommended caudal approach to injections; however, his symptoms continued. Following is a portion of a medical record dated December 8, 2021, from Interventional Pain Specialists:

> Jarod returns today to evaluate progress following series completion. Change to caudal approach proved one week of benefit. He continues to struggle greatly w/lower back, bilateral buttock and posterior leg pain. Medications remain the same. He is scheduled to see Dr. Knox next week.

On December 14, 2021, the claimant is again seen by Dr. Knox. Following is a portion of that medical record:

> HPI: Mr. Jarod Medart was seen in the Northwest Arkansas Neurosurgery Clinic, along with his wife, on 12/14/21 for follow-up. As you know, he continues to be plagued with significant back and bilateral leg pain. It originally started out as right leg pain. Interestingly, he says that when he got his Covid booster, it really flared up his sciatica.

> PLAN: From my standpoint, he wants to consider spinal cord stimulator. I believe he is probably an excellent candidate for this. To that end, we need to redo his lumbar MRI scan with/without contrast after which we will reevaluate and consider the possibility of a spinal cord stimulator.

On February 7, 2022, the claimant is again seen by Dr. Knox. Following is a portion of the Plan section of that medical record:

> February 7, 2022. Patient seen virtual office visit. Reviewed his MRI scan. The fusion appears solid. He continues to be plagued with back and bilateral sciatica. His primary complaint is the bilateral sciatica. In view of that I would recommend that he consider spinal cord stimulator. He is to follow-up with pain management consideration of dorsal column stimulator. Will plan to follow-up p.r.n. We discussed possibility of medical marijuana/cannabis card. He is contact us of he wants to pursue this avenue.

On May 10, 2022, the claimant was seen for a second opinion at the request of the respondents by Dr. Carlos Ramon at Proper Pain Solutions. Following is a portion of Dr. Ramon's report:

> HISTORY OF PRESENT ILLNESS:
> The patient is a 35-year-old gentleman who worked for the University of Arkansas in the IT Department. In April of 2016, he was lifting a projector and felt severe pain in his back. He was seen initially by Dr. Hudu. They did some x-rays of the lumbar spine and looked normal. He had some transitional anatomy at the L5-S1 level. He had physical therapy. They did and MRI of his lumbar spine, initially in June 2016, which showed a small annular tear at the L4-L5 level, mild facet disease, mild-to-minimal stenosis at the L5-S1 level. He saw Dr. Nalley, at Ozark Orthopedics, who put him back at light duty, did not think surgery would be of benefit. The patient returned to work, continued to struggle with his back pain. He subsequently went back in 2018, saw Dr. Knox, got an updated MRI. There was a moderate central disc bulge at the L5-S1, again with only mild stenosis. They referred to pain management. He had epidural injections, bilateral transforaminal at L5-s1, without relief. A third MRI was done in January 2019 showing mild bilateral foraminal stenosis and a disc bulge at the L5-S1. No changes on x-ray. He then had a lumbar fusion surgery

in February 2019 by Dr. Evans. He indicated it was for low back pain secondary to dicogenic pain. They did an interbody fusion. Dr. Knox followed him up after surgery. The patient continued to complain of low back pain, pain down his right leg worse than the left. They did a follow-up MRI and the lumbar fusion at L5-S1 was normal. He continued to complain of pain. He had discussed possible spinal cord stimulator and ultimately did another CT in March of 2021, and they removed the hardware. He had hardware removal of the fusion at the L5-S1. Since the removal, he is still having ongoing pain symptoms, particularly complaining of pain down the legs and low back. The patient has said that the surgeries overall helped his severe pain, but he still deals with chronic ongoing refractor pain. He has been on a host of long-term medications, but he does have hydrocodone moderately, 7.5 mg tables as-needed, dispense #60 per month. He was on gabapentin, which did not show good relief as far as his leg pain, but also caused a lot of sedation; so they put him on Lyrica 75 mg tablets, dispense #60, which he tolerates fairly well. He is on baclofen 10 mg tablets four times a day. Those are his medications as far as pain management is concerned. They have also proposed a spinal cord stimulator. We had an extensive consultation about treatment options, and pros and cons of spinal cord stimulation. His last MRI of the lumbar spine, the canal is open, there is no severe granulation tissue encapsulating a nerve root, he has no stenosis above or below. He is complaining of pain down both legs, but there is no objective rationale for him to have ongoing radicular pain down his legs. I cannot recommend spinal cord stimulator. It will not change his outcome. There is not an objective rationale that is causing his ongoing leg pain. He says the leg pain is worse than the back pain. He gets occasional short term relief from epidural injections. I think the risk-to-benefit on a stimulator does not favor the patient and, again, I do not see an objective rationale for placement. The reason for spinal cord stimulator for failed back would be ongoing stenosis not amenable to surgery or granulation tissue developed on nerve root causing chronic severe unilateral nerve pain or impingement. Global pain in the back, and down both hips and legs is not going to be an indication. He has had previous surgeries without enough relief.

Though the patient says he has got relief, he still does not know if he can continue working given the amount of ongoing pain. He is of young age at 35 years of age. We had a very extensive consult. I do not recommend spinal cord stimulator for the patient. I think there should be adjustment of medications. I think his opiate use is

> appropriate. Occasional injections have been of benefit. He does not need further surgeries, either.
>
> ***
>
> CURRENT MEDICATIONS:
> He is on omeprazole, baclofen, sertraline, Norco, lostatan, hydrochlorothiazide, metoprolol, Lyrica, and aspirin.
>
> PHYSICAL EXAM:
> An alert and oriented, well-developed and well-nourished gentleman. Height 5 feet 11 inches, weight 265 pounds. O2 sat is 97%, heart rate is 80, and respiratory rate is 10. Cranial nerves II through XII are grossly intact. Ambulates, he does have a cane with him and says uses it on occasion. Lumbar spine has a well-healed, three-inch incision. He is not over point tender over the guteal bursa. He complains of pain in his buttocks and down the back of his legs. Muscle tone is appropriate and symmetric for his age and condition. No global weakness. Peripheral pulses are palpable. No gross muscle atrophy of asymmetry in the lower extremities. Range of motion of the hips, knees, and ankles is appropriate. No weakness or footdrop of any kind.
>
> FINAL ASSESSMENT:
> 1. Chronic, ongoing low back pain.
> 2. Lumbar fusion, L5-S1 level.
> 3. Current long-term use of medications.
>
> ***
> FINAL DIAGNOSIS:
> 1. Low back pain.
> 2. Lumbar fusion, L5-S1.
> 3. Long-term opiate use.

On September 20, 2022, Dr. Ennis authored a letter regarding the claimant and Dr. Ennis' belief in the claimant's need to undergo a spinal cord stimulator trial as follows:

> Our clinic has treated Mr. Medart since 2018. He has not received meaningful benefit from injections, medications, physical therapy and surgery including fusion in 2019 and hardware removal in 2021. He has continued to be plagued with bilateral posterior leg pain. MRI obtained in March 2022. Evaluated by Dr. Knox who also agreed and recommended moving forward with spinal cord stimulator trial. He is 36 years old and would prefer to avoid high doses of medications, since he is likely to continue with opiate

> medications chronically. Unfortunately, his alternatives would be further surgical treatment or long-term use of interventional steroids.

The only issue before the Commission is the claimant's request for additional medical treatment in the form of a spinal cord stimulator trial. As such, it must be determined if a spinal cord stimulator trial is reasonable, necessary medical treatment for the claimant's compensable April 4, 2016, low back injury. The claimant has undergone two surgeries which include one fusion at L5-S1 and the later hardware removal surgery. The claimant has prior to, and post-surgery, undergone extensive conservative treatment, including physical therapy, medication, and injections. The claimant still struggles with low back pain and lumbar radiculopathy from his compensable low back injury, even after both surgical and conservative care.

Dr. Ramon's second opinion is clear that he believes the claimant should continue treatment but not through a spinal cord stimulator trial. However, I believe that Dr. Ennis and Dr. Knox are in the best position to determine the treatment path for the claimant as they have both long participated in his care, having had the opportunity to see the claimant on occasions both prior to and after surgical intervention and participate in the conservative treatment that has been given throughout the claimant's time since his compensable injury. I find that the spinal cord stimulator trial recommended by both Dr. Knox and Dr. Ennis to be reasonable, necessary medical treatment for the claimant's April 4, 2016, compensable low back injury.

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 his 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 the pre-hearing conference conducted on December 5, 2022, and contained in a Pre-hearing Order filed December 6, 2022, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment in the form of a trial spinal cord stimulator as recommended by both Dr. Knox and Dr. Ennis as it is reasonable, necessary medical treatment for his compensable low back injury.

ORDER

The respondents shall be responsible for the costs associated with the claimant's reasonable, necessary spinal cord stimulator trial.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE