

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H009646 & H105119**

NORMA R. PACE, EMPLOYEE	CLAIMANT
NIDEC MOTOR CORPORATION, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED **JUNE 2, 2022**

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

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas

Respondents represented by PHILLIP M. BRICK, JR., Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 20, 2022, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A prehearing conference was conducted on April 14, 2022, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No.1 with a modification and with no objection, was made part of the record.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on February 13, 2020.

The issues to be litigated are limited to the following:

1. Whether claimant is entitled to medical treatment, specifically by Dr. Shahim.
2. Attorney's fee.

All other issues are reserved by the parties.

The claimant contends that “the medical services recommended by Dr. Shahim are reasonably necessary for her compensable injury. The claimant further contends that the respondents have controverted her entitlement to this treatment and any other benefits arising therefrom.”

The respondents contend that “the recommended treatment required that it be preauthorized under Rule 30. The treatment was not approved following review and Dr. Shahim was notified and failed and/or refused to provide additional information or to further appeal the determination. As a result, the treatment is not reasonable, necessary, or related to the work injury and not the responsibility of the respondents.”

From a review of the entire record, including medical reports and documents, and having heard the testimony and observed the demeanor of the witness, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the prehearing conference conducted on April 14, 2022 and contained in the Prehearing Order filed the same date are hereby accepted as fact.
2. Claimant has met her burden of proof by a preponderance of evidence that she is entitled to additional medical treatment from Dr. Reza Shahim.
3. Respondent has controverted claimant’s entitlement to the medical treatment from Dr. Shahim, but claimant did not prove any indemnity benefits are currently due, and therefore, no attorney’s fee is awarded.

FACTUAL BACKGROUND

This is the second hearing conducted in this matter. On October 22, 2021, the parties litigated claimant’s entitlement to temporary total disability benefits and attorney's fees on those benefits. A decision granting those benefits was entered on December 16, 2021, and as it was not appealed; that order is *res judicata*.

In its prehearing questionnaire, respondent left out the word “not” from its second sentence of its contentions, making it read “The treatment was approved following review...” Before the hearing began, respondent pointed out this mistake, and amended its contentions to correct that error. Claimant did not object, and the word “not” was written in the prehearing order in the appropriate place.

Respondents moved that the record from the previous hearing be adopted and incorporated as a part of this hearing. Claimant did not object, and that record was incorporated by reference.

HEARING TESTIMONY

Claimant was the only witness to testify during the hearing. She recounted much of what she had testified to at the previous hearing regarding how the injury to her neck took place. Claimant also related a brief summary of the medical treatment she had received before October, 2021 when she was awaiting an appointment with Dr. James Thomas in Hot Springs. Claimant said that visit didn’t happen, but the workers’ comp carrier sent her to see Dr. Reza Shahim. Dr. Shahim told claimant that she had a ruptured disc in her neck and that he would do surgery to correct it. Dr. Shahim had tried conservative treatment through medication including Neurontin and Tizanidine, which was added to the Tramadol and Cyclobenzaprine that she was already taking. She said that the medication helped her sleep but has not alleviated her neck problem. Claimant explained that she had had previous neck problems at the C5-6 and C6-7 level which resulted in a cervical fusion in 2017. Claimant began working at respondent Nidec after the fusion and was not having any residual problems with her neck prior to her injury in February, 2020.

On cross-examination, claimant explained more about her neck injury that led to the fusion in 2017. Claimant said she did not know the results of the nerve conduction study that Dr. Sprinkle had done following her February, 2020 injury. Claimant had learned from Dr. Shahim that the x-ray

showed degenerative disc disease at C4-C5, and the MRI showed a degenerative disc bulge and other degenerative changes at C4-C5.

On redirect, claimant said that she understood Dr. Shahim had reviewed the current MRI and determined that she has a herniated disc that is causing her problems in her neck.

REVIEW OF MEDICAL RECORDS

The records submitted by claimant added little to her testimony. There were two MRIs performed, on July 7, 2021 and March 9, 2022, both showing a disc herniation at the C4-5 level. Dr. Shahim noted that conservative treatment had not provided relief, and as such, claimant was scheduled for an anterior fusion at the C4-5 level.

Respondent submitted sixteen pages of reports from claimant's 2017 cervical fusion surgery at the C5-6 and C6-7 levels, as well as a record from Dr. Brent Sprinkle that was considered in the previous hearing. Finally, there was a letter from Tracy Hogan, RN to Dr. Shahim, denying the request for authorization to perform the surgery Dr. Shahim had determined was necessary. This letter will be discussed more fully below.

DISCUSSION

Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury, *Dalton v. Allen Engineering Co.*, 66 Ark.App.201, 989 S.W.2d 543 (1999). What constitutes reasonably and necessary medical treatment is a question of fact for the Commission, *Wright Contracting Co. 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 to be a credible witness, and has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable neck injury as recommended by Dr. Shahim.

Claimant's contention for this hearing was that the medical services proposed by Dr. Shahim were reasonable and necessary to treat her herniated cervical disc. Respondent defended this matter by referring to Rule 099.30 (hereinafter "Rule 30") of the Arkansas Workers' Compensation Commission¹, maintaining that Dr. Shahim did not provide additional information to respondent Travelers Insurance after his request for preauthorization was denied, and therefore the treatment was not reasonable nor necessary or related to the work injury. I find respondent's position fails for two reasons.

First, according to the denial letter submitted by respondent (R.x.19-20), Dr. Shahim submitted this procedure for preauthorization as he is required to do as per Rule 30, and Tracy Hogan, the RN working for respondent Travelers Insurance, denied preauthorization. However, nothing in that letter demonstrated that Ms. Hogan or Dr. Melissa Neiman, M.D., the Physicians Advisor for The Travelers Indemnity Company cited by Ms. Hogan, are certified by the State of Arkansas to be a private review agent. As Rule 30 clearly states, a denial decision shall only be made by someone certified by the State of Arkansas to do so. Thus, the request for preauthorization submitted by Dr. Shahim was not proven to be properly denied by respondent.

Second, setting aside for the moment the lack of proof of respondent's compliance with the rule it cited as a defense to this claim, I find Dr. Shahim is in a better position to determine what kind

¹ Rule 30(I)(S) provides, in pertinent part:

Preauthorization.

Preauthorization is required for all nonemergency hospitalizations, transfers between facilities, and outpatient services expected to exceed \$ 1000.00 in billed charges for a single date of service by a provider. A denial decision for payment for any type of health care service and/or treatment resulting from a utilization review, as opposed to a determination of whether such service or treatment is related to a compensable injury, shall only be made by an Arkansas certified private review agent. The Arkansas Department of Health Utilization Review certification number is required upon request.

of treatment is reasonable and necessary for claimant's condition than is Dr. Neiman. Dr. Neiman did not provide her credentials for offering an opinion on what is necessary and reasonable treatment for a cervical herniation, and Dr. Neiman never examined claimant. I find that claimant has proven by the preponderance of the evidence that she is still in need of medical treatment and that the course of treatment recommended by Dr. Shahim is reasonable and necessary.

Claimant raised as an issue that respondent has controverted her entitlement to the treatment by Dr. Shahim, and I find that claimant is correct in this contention. However, there was no proof as to what indemnity benefits respondent has refused to pay. As such, I cannot award an attorney's fee to claimant at this time.

ORDER

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her cervical spine injury as directed by Dr. Shahim.

Pursuant to A.C.A. § 11-9-715(a)(1)(B)(ii), attorneys fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." In this case, there was no claim that indemnity benefits have been controverted up to the date of hearing, and as all issues other than medical benefits were reserved, no attorney's fee can be awarded in this matter at this time. Claimant's attorney is free to voluntarily contract with medical provider pursuant to A.C.A. § 11-9-715(a)(4).

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$262.80.

IT IS SO ORDERED

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE