

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H103763

ELIZABETH SALTO,
EMPLOYEE

CLAIMANT

UNIVERSITY OF ARKANSAS FAYETTEVILLE,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 4, 2023

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed July 27, 2022. The administrative law judge found that the claimant failed to prove she was entitled to additional medical treatment. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that the claimant proved she was entitled to additional medical treatment in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

I. HISTORY

Elizabeth Salto, now age 43, testified that she became employed as a custodian for the respondent-employer, University of Arkansas, in 2018. The parties stipulated that the employee-employer relationship existed on February 12, 2021, on which date the claimant “sustained a compensable injury to her tailbone (coccyx fracture).” The claimant testified that she slipped on ice and fell on her buttocks.

According to the record, the claimant treated at Arkansas Occupational Health Clinic on February 22, 2021:

At the request of and authorization by University of Arkansas, we are seeing Elizabeth Salto....
Patient states she was going to the building to start her duties. She states she slipped on ice and fell down the stairs onto her bottom. She states she is having pain in the bottom, lower back and neck....
Faded bruising is present to left Sacrum....

Amanda Bell, APRN diagnosed “1. Sacrum/Coccyx contusion.” Ms. Bell planned conservative treatment.

An MRI of the claimant’s pelvis was taken on March 17, 2021 with the impression, “Focal edema involving the tip of the coccyx, consistent with an acute nondisplaced fracture.”

It was planned in part on March 18, 2021, “She agrees to Physical Therapy referral to help with her low back and sacral pain & improve her functioning.”

An investigator with Meridian Investigative Group performed surveillance of the claimant on four dates beginning April 21, 2021. The investigator concluded, "The claimant appeared to move in a fluid, unrestricted manner. No visible braces or supports were observed."

Dr. Mark Miedema reported on April 29, 2021:

Mrs. Salto presents for evaluation of 2-1/2 months low back and tailbone pain. She had a work-related injury on 2/12/2021. She had a slip and fall onto her back and buttock and fell down about 3 steps which precipitated her symptoms. She was not having pain prior to this incident. She has been going to physical therapy, exercising at home, taking gabapentin and methocarbamol.

On my review of her pelvic MRI done at Mana on 3/17/2021 that showed edema within the tip of the coccyx consistent with an acute nondisplaced fracture....

I educated the patient on conservative treatment options including physical therapy, home exercise program, healthy diet and lifestyle, acupuncture, massage, chiropractic care, pharmacotherapy and injections.

I encouraged her to continue with physical therapy and home exercising is already in progress.

She has [an] acute nondisplaced coccyx fracture as result of her work injury. I encouraged her this should continue to heal.

These typically take 6 to 12 weeks to heal. I am hopeful that in another month she will be feeling almost back to normal.

Given the severity of the patient's pain and functional limitation and no relief or inability to tolerate conservative measures, we will proceed with a ganglion impar block for diagnostic and therapeutic purposes.

I do not yet think she has reached maximal medical improvement. She may return to work next week with no restrictions. I do not expect this injury to result in a permanent impairment or require surgery. I think she will have reached MMI in approximately one more month.

I will plan to follow-up with this patient after this procedure to reassess their progress.

Dr. Miedema assessed “1. Low back pain,” “2. Pain in the coccyx,” and “3. Fracture of coccyx.”

Dr. Miedema performed a Lumbar Sympathetic Ganglion Impar Block on July 1, 2021. The claimant testified on cross-examination that she did not benefit from this procedure.

An MRI of the claimant’s pelvis was taken on July 26, 2021 and was compared with the March 17, 2021 study:

There are a few well-circumscribed fat intensity lesions within the sacrum and right ilium, the largest of which measures 1.1 cm. The previously seen focal edema at the tip of the coccyx has resolved. No evidence of a fracture is seen....
IMPRESSION: 1. No evidence of a fracture is seen.

The claimant followed up with Dr. Miedema on August 5, 2021:

Mrs. Salto presents for follow-up evaluation of 5.5 months low back and tailbone pain. To review she had a slip and fall while at work on 2/12/2021 which precipitated her symptoms. She has been going to physical therapy, exercising at home, taking gabapentin and methocarbamol without relief. She is here to review recent MRI.

On my review of her pelvic MRI done at Ozark on 7/24/2021 this was normal with resolution of the edema previously seen at the tip of the coccyx and no evidence of fracture. To review pelvic MRI done at Mana on 3/17/2021 showed edema within the tip of the coccyx consistent with an acute nondisplaced fracture....

I encouraged her to continue with physical therapy and home exercising is already in progress....

She had a nondisplaced coccyx fracture as result of her work injury. I encouraged her this is healed [on] her most recent MRI.

She is s/p a ganglion impar block on 7/1/21 with unfortunately limited relief. I encouraged her she will continue to improve

with time. I will refill her methocarbamol as an adjuvant for pain relief and muscle spasms.

I think she has reached maximal medical improvement. I do not think this injury has caused permanent impairment. She may continue to work with no restrictions.

I will follow-up with her as needed.

Dr. Kenton Hagan examined the claimant on September 8, 2021:

The patient complains of sacrococcygeal joint pain, stiffness, and weakness. It is constant, sharp, stabbing, tender to touch, and numbing pain. The symptoms are 7 out of 10 currently. The symptoms have been present for 8 months. The symptoms have been treated with epidural steroid injection and physical therapy. The condition is worse with sitting, worse with standing, worse during the day, and worse during the night....

Impression/Plan:

Pain over coccyx after fall at work.

Prior epidural and MRI with Dr. Miedema at Ozarks. MRI and records are not available to review.

Does not want another injection due to pain of procedure.

Discussed options and agree to Celebrex and starting pelvic PT (Charla Cox).

The claimant testified on direct examination:

Q. We have [Dr. Hagan's] records in evidence and they seem to reflect that he wanted you to have some pelvic physical therapy. Is that correct?

A. That is correct.

Q. And was that the same type of physical therapy you had had before?

A. No.

Q. Were you able to have that physical therapy?

A. I went about two to three times and then they said that they were not going to cover it anymore.

Q. Okay. And in that therapy, what were you doing?

A. She was teaching me breathing methods, meditating to ease the pain. I had to do some exercises. Like with touching, she tried doing stuff and I couldn't do the touching at that point, so we were going to work towards where I was

okay where she could touch, but I didn't get to finish my treatment.

Q. Did you get to return to Dr. Hagan?

A. They said I couldn't go back.

The record contains a Change of Physician Order dated September 10, 2021: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Elizabeth Salto to change from Dr. Mark Miedema to Dr. Kenton Hagan[.]"

The claimant treated with a physical therapist, Jacquelynn M. Saravane on September 21, 2021 and September 24, 2021.

The claimant visited telephonically with Dr. Francisco Avalos, La Sagrada Familia Medical Clinic, Cicero, Illinois, on October 2, 2021. Dr. Avalos diagnosed "Chronic coccyx fracture pain please excuse! Myalgia, weakness, ambulatory difficulty, lower limb pain."

The claimant followed up with Dr. Avalos on October 7, 2021.

The claimant treated with Ms. Saravane on October 15, 2021.

Dr. Avalos' recommendation on November 2, 2021 was a "Neurology consult."

Dr. Avalos diagnosed the following on January 22, 2022: "Coccyx fracture...Please removal (sic) all restrictions (work). Patient is doing better."

A pre-hearing order was filed on April 13, 2022. The claimant contended, "The claimant contends she is entitled to receive additional

medical treatment by her authorized treating physician. The claimant reserves all other issues.”

The respondents contended, “The respondents contend the claimant reported having a fall injury on February 12, 2021 which has been accepted as compensable and that the claimant has been provided all benefits to which she is entitled for her fractured coccyx tailbone injury. The respondent has provided claimant with medical treatment reasonable and necessary for the compensable injury, including March 17, 2021 and July 26, 2021 MRI studies, and treatment with Dr. Mark Miedema who treated the claimant conservatively. Dr. Miedema reviewed both MRI studies and released the claimant at maximum medical improvement on August 5, 2021 with 0% permanent impairment. The respondent was provided by respondent her one time change of physician with Dr. Kenton Hagan, whom she saw on September 8, 2021. Dr. Hagan did not take claimant off work. The claimant was paid temporary total disability benefits from April 12, 2021 until May 2, 2021, at which point Dr. Miedema released the claimant to return to work without restrictions on May 3, 2021. The claimant subsequently resigned February 28, 2022.”

The parties agreed to litigate the following issue: “1. Claimant’s entitlement to additional medical treatment.”

A hearing was held on July 11, 2022. The claimant testified on direct examination:

Q. How are your symptoms now?

A. I am still in pain. It hurts to sit, to stand. I just have to be moving from side to side and stuff and I need to take breaks and sit down. But I mean I am not dying, but it is bothering me.

Q. And since the accident happened, have you had any new injuries to your back or your buttocks?

A. No, ma'am.

Q. And what about any improvement, have you ever completely gotten better during this time?

A. No.

Q. What is it that you want from this hearing?

A. I just want to continue the sessions I was doing with the pelvic therapist because she was promising so many things and I was really, really looking forward to that and Dr. Hagan said, also, he wanted to do more things to see and just I want to get better. I just want treatment.

An administrative law judge filed an opinion on July 27, 2022 and found that the claimant failed to prove she was entitled to additional medical treatment. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

The employer shall promptly 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)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar*

General Stores, 91 Ark. App. 260, 209 S.W.3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). What constitutes reasonably 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).

An administrative law judge found in the present matter, “2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury.” The Full Commission does not affirm this finding.

The parties stipulated that the claimant sustained a compensable injury to her tailbone in the form of a coccyx fracture on February 12, 2021. The claimant testified that she slipped on ice and fell. The evidence demonstrates that the claimant has suffered from significant and chronic pain as result of the compensable injury. An APRN diagnosed “Sacrum/Coccyx contusion” on February 22, 2021 and the claimant was treated conservatively. An MRI of the claimant’s pelvis on March 17, 2021 showed “Focal edema involving the tip of the coccyx, consistent with an acute nondisplaced fracture.” The claimant was initially referred to physical therapy on March 18, 2021.

Dr. Miedema correctly noted on April 29, 2021 that the claimant “was not having pain” prior to the compensable injury. Dr. Miedema planned in part, “I encouraged her to continue with physical therapy and home exercising is already in progress.” The claimant testified that she did not benefit from an injection performed by Dr. Miedema on July 1, 2021. The findings from an MRI on July 26, 2021 included the following: “The previously seen focal edema at the tip of the coccyx has resolved. No evidence of a fracture is seen....IMPRESSION: 1. No evidence of a fracture is seen.”

On August 5, 2021, Dr. Miedema reported that he had reviewed the July 2021 diagnostic study. Dr. Miedema opined, “I think she has reached maximal medical improvement.” The Full Commission interprets Dr. Miedema’s August 5, 2021 report to indicate that the claimant had reached the end of her healing period for the February 12, 2021 compensable injury. Nevertheless, it is well-settled, established law that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant’s injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004), citing *Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Although he opined that the claimant in the present matter had reached maximal medical improvement no later than August 5, 2021, Dr. Miedema also plainly stated, “I encouraged her to continue with physical therapy and home exercising is already in progress.” Dr. Hagan began treating the claimant on September 8, 2021. Like Dr. Miedema, Dr. Hagan recommended continued physical therapy. Dr. Hagan specifically planned “pelvic PT (Charla Cox).” The claimant testified that the respondent-carrier allowed her to receive some physical therapy before controverting additional treatment. The claimant received a statutory Change of Physician to Dr. Hagan on September 10, 2021, after the claimant’s first visit with Dr. Hagan on September 8, 2021. The respondents do not contend that any of the claimant’s treatment of record, including treatment with Dr. Hagan, was unauthorized in accordance with Ark. Code Ann. §11-9-514(c)(3)(Repl. 2012).

The record indicates that rather than treating with Charla Cox as recommended by Dr. Hagan, the claimant treated with Jacquelynn M. Saravane beginning September 21, 2021. The claimant testified that she benefitted from physical therapy provided by Ms. Saravane. The claimant testified that she simply wished to receive additional physical therapy in accordance with the recommendation of Dr. Hagan. The claimant bears the burden of proving that she is entitled to additional medical treatment. *Ark.*

Health Ctr. v. Burnett, 2018 Ark. App. 427, 558 S.W.3d 428. The Full Commission finds in the present matter that the claimant proved additional physical therapy was reasonably necessary in connection with her compensable injury.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she was entitled to a program of physical therapy as recommended by Dr. Hagan. The claimant proved that said treatment was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion finding that the claimant has proven by a preponderance of the evidence that she is entitled

to additional medical treatment resulting from her February 12, 2021 compensable injury.

The question at hand is not simply whether a treating physician found that additional treatment was necessary for a claimant's recovery. When assessing whether medical treatment is reasonably necessary, we must analyze *both the proposed procedure and the condition it is sought to remedy*. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Treatments to reduce or alleviate symptoms resulting from a compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. *Foster v. Kann Enterprises*, 2009 Ark. App. 746, 350 S.W.2d 796 (2009). That being said, any liability for additional medical treatment may extend beyond the healing period but *must be geared toward the management of the compensable injury*. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonably 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). However, the Commission may not arbitrarily disregard medical evidence. *Pyle v. Woodfield, Inc.*, 2009 Ark. App. 251, 306 S.W.3d 455 (2009). The Commission also has the duty of weighing the

medical evidence as it does any other evidence, and resolving any conflict is a question of fact for the Commission. *Crow v. Weyerhaeuser Co.*, 46 Ark. App. 295, 880 S.W.2d 320 (1994) (citing *Chamberlain Group v. Rios*, 45 Ark. App. 144, 871 S.W.2d 595 (1994)). However, the Commission is not bound by medical opinion, although it may not arbitrarily disregard the testimony of any witness. It is also entitled to examine the basis for a doctor's opinion in deciding the weight to which that opinion is entitled. *Id.* (citing *Reeder v. Rheem Mfg. Co.*, 38 Ark. App. 248, 832 S.W.2d 505 (1992)).

On April 29, 2021, the claimant was referred to orthopedist Dr. Mark Miedema. Dr. Miedema concluded that the claimant had not reached MMI, but that he did not expect her injury to result in permanent impairment or require surgery. (Resp. Ex. 1, P. 32). Dr. Miedema recommended a ganglion impar block at that time. *Id.* At the April 29, 2021 visit, Dr. Miedema released the claimant to work full duty on May 3, 2021 and opined that she would reach MMI in approximately one month. *Id.* On July 15, 2021, Dr. Miedema examined the claimant, ordered an MRI, and once again released the claimant to work without restriction. (Resp. Ex. 1, P. 40). The results of the MRI on July 26, 2021 showed that “the previously seen focal edema at the tip of the coccyx has resolved. No evidence of a fracture is seen.” (Resp. Ex. 1, P. 43). On August 5, 2021, Dr. Miedema “encouraged her

[the nondisplaced coccyx fracture] is healed on her most recent MRI.” (Resp. Ex. 1, P. 50). Dr. Meidema released the claimant at maximum medical improvement with no permanent impairment on August 5, 2021. *Id.*

The claimant was later evaluated by Dr. Kenneth Hagan using her one-time change of physician through the Commission. She was only seen by Dr. Hagan one time and he noted in his report that he did not have Dr. Miedema’s findings to review. (See Resp. Med. Ex., P. 53). The claimant testified that she later visited with Dr. Francisco Avalos by phone on two (2) occasions but never saw him in person and was never examined or treated by him. (Hrng. Trans., Pp. 21-22).

Dr. Miedema’s findings bear greater weight than the opinions of either Dr. Hagan or Dr. Avalos. Dr. Miedema is an orthopedic specialist and is the only physician who treated, examined, and tested the claimant numerous times. Further, Dr. Miedema reviewed the results of the July 26, 2021 MRI showing that the fracture was healed while neither Dr. Hagan nor Dr. Avalos accessed or reviewed those records. In fact, Dr. Avalos, a general practitioner, never met with the claimant in person and Dr. Hagan only saw her one time.

Based upon the facts presented, the claimant’s testimony, and reports from the treating physicians and physical therapist, Dr. Mark Miedema’s opinion must bear the greatest weight. After reviewing two

MRIs nearly six months after the claimant's injury, Dr. Miedema determined that the claimant did not need any additional medical treatment and was capable of full duty work with no restrictions. The ALJ's findings were therefore well-reasoned.

For these reasons, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner