BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H006753

JACOB M. SHOTZMAN, EMPLOYEE	CLAIMANT
WILBERT FUNERAL SERVICES, INC., EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 27, 2026

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

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed April 24, 2026. The administrative law judge granted the claimant's request for an independent psychological evaluation. The administrative law judge also granted the respondents' request for an independent medical evaluation. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove he was entitled to a second psychological evaluation. The claimant did not prove such an evaluation was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Supp. 2024).

I. HISTORY

Jacob Michael Shotzman, now age 38, testified that he had previously worked for the respondent-employer, and that he returned to work for the respondents in July 2020.

The parties stipulated that the employment relationship existed on August 29, 2020.

The parties stipulated that the claimant "sustained a compensable injury" on August 29, 2020. The claimant testified that he felt "a sharp pain" in his back while performing employment services.

A physician noted on August 31, 2020, "Patient is being seen today for symptoms of lower back pain, onset this past Saturday while working his job at Wilbert Vault. He states he lifted on the vault 'like usual, been doing this a long time, but this time felt a pain and pull in lower back on the right side.'" The diagnosis was "Acute lower back pain."

An MRI of the claimant's lumbar spine was taken on October 5, 2020, with the impression, "Lower lumbar spondylosis, worst at the L5-S1 level where there is moderate lateral recess and foraminal stenosis." Dr. Mark Miedema performed lumbar injections on October 27, 2020. The claimant testified that his physical condition worsened following the injections from Dr. Miedema.

The claimant began treating with Dr. James B. Blankenship on November 23, 2020:

> The patient has had right-sided lower back pain, right hip and right buttock pain since an injury in August of this year when he was picking up a vault and bent over. He had the immediate onset of pain that has gotten progressively worse. The patient has done eight total visits at Wellness in Charleston. He is on naproxen. He has had one injection at Ozark Orthopedics. It appears that these were facet injections. He did not get any relief even transiently….
> I have recommended that we get him in to start working with the folks at Total Rehab in Fort Smith….I do want him to continue to work at light duty.

Dr. Blankenship noted on December 31, 2020, "He has been doing physical therapy with Total Spine and this only gives him very temporary relief….After a very lengthy discussion, I have told him he has failed all routine and usual conservative measures. I offered him a stand-alone anterior lumbar interbody arthrodesis at the lumbosacrum. I have gone over the risks and benefits, and after a lengthy discussion he has elected to proceed."

Dr. Blankenship reported on January 20, 2021:

> Please be advised that the above patient has been a regular patient of this office and has been treated at our office on Dec 31, 2020.
> Patient needs to remain off work until 6 weeks after surgery that is scheduled on 2-10-21 due to to (sic) increasing pain and difficulty with ambulation, ie..standing, walking, bending, twisting without assistance….

A physician with Genex opined on February 5, 2021, that a stand-alone anterior lumbar interbody arthrodesis was not medically necessary.

Dr. Frank J. Tomecek stated in part on April 7, 2021, "I do not agree with Dr. Blankenship's opinion. I do not believe this patient will be helped with a spinal fusion."

A pre-hearing order was filed on April 8, 2021. The claimant contended, "The medical treatment recommended by Dr. Blankenship is reasonably necessary medical treatment for his compensable injury."

The respondents contended, "All appropriate benefits have been paid with regard to this matter. The claimant is scheduled to undergo a second opinion evaluation to address the surgical recommendation and whether the same is reasonable and necessary for the claimant's acute injury. That evaluation took place on for (sic) April 7, 2021, but the report from the evaluation was not available at the time of the prehearing conference. Respondents may amend their contentions after receipt of the second opinion evaluation report to determine whether the surgical recommendation of Dr. Blankenship is reasonable and necessary."

The parties agreed to litigate the following issue: "1. Whether the claimant is entitled to additional medical benefits. All other issues are reserved."

A hearing was held on June 1, 2021. At that time, an administrative law judge announced that the parties also agreed to litigate whether the claimant was entitled to additional temporary total disability benefits. The claimant testified that he was suffering from chronic back pain and numbness in his right lower extremity.

An administrative law judge filed an opinion on July 1, 2021. The administrative law judge found, in pertinent part:

> 2. Claimant has met his burden of proof by a preponderance of the evidence that he is entitled to additional medical treatment from Dr. James Blankenship.
> 3. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits, specifically claimant's entitlement to temporary total disability.

The respondents appealed to the Full Commission.

The Full Commission filed an opinion on December 29, 2021. A majority of the Full Commission found that the claimant proved he was entitled to "additional medical treatment in the form of a stand-alone anterior lumbar interbody arthrodesis at the lumbosacrum as recommended by Dr. Blankenship. Additionally, the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning on January 20, 2021, and continuing through a date yet to be determined."

A CT of the claimant's lumbar spine was taken on February 14, 2023, with the following impression:

> ANTERIOR FUSION AT L5-S1 WITH NO EVIDENCE OF HARDWARE COMPLICATION OR SIGNIFICANT BRIDGING OSSEOUS FUSION.
> NO SIGNIFICANT SPINAL CANAL OR FORAMINAL STENOSIS IN THE LUMBAR SPINE.

Dr. Blankenship noted on February 20, 2023:

> The patient is in [today] for followup. He has low back pain. He states it is a different type of pain than he had prior to surgical intervention. He denies any leg pain. His right lower extremity pain that he had prior to surgical intervention is now resolved….
> After a lengthy discussion, the patient would like to proceed on with surgical intervention. I have offered him an LLIF at L4-L5 lateral fusion with same-day posterolateral fusion with decorticating the facet joints bilaterally at L4-L5 and L5-S1 and putting in a BridgePoint clamp. We will attempt to get this authorized by his workman's compensation carrier.

Dr. Blankenship performed a lumbar interbody arthrodesis on April 11, 2023. The pre- and post-operative diagnosis was "1. Recurrent segmental spinal stenosis L4-5. 2. Degenerative disc disease L4-5 foraminal stenosis L4-5."

Dr. Blankenship reported on September 21, 2023:

> Mr. Shotzman was seen by me in the office a few weeks ago. At that time his last surgical intervention was noted to be in April of this year. He underwent an LLIF at L4-L5 at the adjacent segment….I need to discuss with Mr. Shotzman whether he would like to consider a revision which would include a re-operation at L4-L5 with either a replacement or impacting the implant in with lateral plating….

Dr. Blankenship gave the following impression on February 5, 2024:

> Mr. Shotzman returns today. He did have facet injections by Dr. Cannon and did not get any relief. Having failed this, I told

> Mr. Shotzman when we saw him last in mid January that I would offer him bilateral pedicular fixation at L4-L5 and unilateral fixation on the right with bilateral facet disruption…. In summary, we need to fix the implant that is extruded out somewhat into the paraspinous muscles on the right….

A physician with Genex opined on February 28, 2024 that additional surgery recommended by Dr. Blankenship "did not meet the established criteria for medical necessity."

A pre-hearing order was filed on April 4, 2024. The claimant contended, "The surgery recommended by Dr. Blankenship represents reasonably necessary medical treatment for his compensable injury and the expense of such treatment is the liability of the respondents under Ark. Code Ann. §11-9-508." The respondents contended, "All appropriate benefits are being paid with regard to this matter. The recommended surgery did not pass precertification and is not reasonable and necessary associated with claimant's injury." The parties agreed to litigate the following issue: "1. Whether claimant is entitled to additional medical treatment as recommended by Dr. Blankenship. All other issues are reserved by the parties."

A hearing was held on June 5, 2024. The claimant testified that he continued "to have problems" following physical therapy, medication, injections, and two surgeries performed by Dr. Blankenship. The claimant testified, "I have more pain now than I had before even the first surgery."

The claimant testified that he was receiving temporary total disability benefits.

An administrative law judge filed an opinion on July 11, 2024. The administrative law judge found, "2. Claimant has met his burden of proof by a preponderance of the evidence that he is entitled to additional medical treatment from Dr. James Blankenship for his back injury."

The respondents filed a notice of appeal to the Full Commission. In an order filed September 18, 2024, however, the Full Commission granted the respondents' motion to dismiss the appeal.

The parties have stipulated, "All prior opinions are *res judicata*."

The record indicates that the claimant began receiving pain management at Arkansas Pain Specialists on February 20, 2025.

Dr. Blankenship reported on March 13, 2025, "He is six months out and still having a significant amount of pain. With his SI joint injections failing, I told him we are at the point that if he would like to consider dorsal column stimulation then we can have him review the literature on it and then get him in to see Dr. Cannon for a trial after neuropsych testing and approval by his workers' comp carrier. He is going to go home and think this over and look at the video and then give us a call."

The claimant continued to follow up at Arkansas Pain Specialists.

Pursuant to Dr. Blankenship's request, Dr. Richard D. Back, a clinical neurologist, provided a "Pre-Surgical Evaluation" on April 16, 2025. Dr. Back's impression was "Somatic Symptom Disorder with predominant pain" and "Obsessive Compulsive Disorder." Dr. Back recommended "1. Continued psychotherapy for issues of depression and anxiety, and especially for OCD symptoms. 2. Conservative medical treatment. He is not a good candidate for further aggressive treatment."

Dr. Robert Cannon noted on April 21, 2025, "Jacob Shotzman is a pleasant 37 year old Male seen today for LBP with bilateral lower extremity pain. He is here to discuss spinal cord stimulator….Discussed SCS trial, implant with patient. He will consider his options and call when ready. He has passed psych screening exam with Dr. Back."

Dr. Blankenship noted on August 7, 2025:

> He does have a new lumbar MRI for review today that was ordered by Dr. DeMiranda, his pain management doctor. He's still on his same medications, and we started him on a Butrans patch. He has an FCE today that showed reliable effort. He's complaining of right sided low back pain, radiates into his right hip and right buttock….The patient did fail his psych evaluation was needed preoperatively for a dorsal column stimulator. He rates his overall pain about 30% towards the worst imaginable….
> In summary, I still feel like Jacob, especially based on his good response with his FCE, is a good candidate for a dorsal collum (sic) stimulation. I have a lot of respect for Dr. Back, but I respectfully disagree with him. Hopefully we get another evaluation and can move forward to get this gentleman taken care of….

A pre-hearing order was filed on January 8, 2026. According to text of the pre-hearing order, the claimant contended, “The claimant is entitled to an independent physiological examination.”

The respondents contended, “All appropriate benefits are being paid with regard to claimant’s lower back injury sustained on August 29, 2020. Claimant has undergone multiple surgeries with Dr. Blankenship, none of which appear to have been successful. Dr. Blankenship has not recommended a spinal cord stimulator, and claimant did not pass the necessary neuropsychic evaluation to obtain the same. Respondents are requesting an IME with Dr. Carlos Roman to address the multiple medications claimant is currently being prescribed to determine whether those medicines are reasonable and necessary. This IME is being requested pursuant to ACA §11-9-511 and §11-9-811. Respondents contend that the IME is reasonable and necessary and request an Order for claimant to attend the same with Dr. Roman. Claimant has requested an independent psychological evaluation. Claimant has already undergone one with Dr. Back who determined that he is not a candidate for a spinal cord stimulator. There are no conflicting opinions on this issue, and an IPE is not reasonable and necessary."

According to the text of the pre-hearing order, the parties agreed to litigate the following issues:

1. Respondents' request for an independent medical examination by Dr. Roman.
2. Claimant's entitlement to an independent physiological examination. All other issues are reserved by the parties.

An administrative law judge filed an opinion on April 24, 2026. The administrative law judge granted the respondents' request for an independent medical evaluation. The claimant does not appeal that finding. The administrative law judge granted the claimant's request for an independent psychological evaluation. The respondents appeal that finding 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(Supp. 2024). 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 70 (1984).

An administrative law judge found in the present matter, "2. Claimant's request for an independent psychological evaluation is granted." The Full Commission does not affirm this finding.

As we have discussed, the parties stipulated that the claimant sustained a compensable injury on August 29, 2020. The claimant testified that he felt "a sharp pain" in his back while performing employment services. Dr. Blankenship stated in December 2020, "I offered him a stand-alone anterior lumbar interbody arthrodesis at the lumbosacrum." An administrative law judge filed an opinion on July 1, 2021 and found that the claimant proved he was entitled to additional medical treatment from Dr. Blankenship. A majority of the Full Commission found on December 29, 2021 that the claimant proved he was entitled to "additional medical treatment in the form of a stand-alone anterior lumbar interbody arthrodesis at the lumbosacrum as recommended by Dr. Blankenship."

Dr. Blankenship performed another surgical procedure on April 11, 2023, a lumbar interbody arthrodesis. An administrative law judge filed an opinion on July 11, 2024 and found that the claimant proved he was entitled to additional medical treatment from Dr. Blankenship. The parties have stipulated, "All prior opinions are *res judicata*."

Dr. Blankenship noted in March 2025, "I told him we are at the point that if he would like to consider dorsal column stimulation then we can have

him review the literature on it and then get him in to see Dr. Cannon for a trial after neuropsych testing and approval by his workers' comp carrier." Dr. Richard D. Back, a clinical neurologist, provided a "Pre-Surgical Evaluation" on April 16, 2025. Dr. Back's impression included "Somatic Symptom Disorder with predominant pain." Dr. Back recommended "1. Continued psychotherapy for issues of depression and anxiety, and especially for OCD symptoms. 2. Conservative medical treatment. he is not a good candidate for further aggressive treatment." Dr. Blankenship thereafter recommended another psychological evaluation.

The Full Commission finds that the claimant did not prove another psychological evaluation recommended by Dr. Blankenship in 2025 was reasonably necessary in connection with the compensable injury sustained by the claimant in 2020. The claimant has undergone at least two back surgeries performed by Dr. Blankenship. The claimant testified on June 5, 2024, "I have more pain now then I had before even the first surgery." Dr. Blankenship's recommendation in March 2025 included consideration of "dorsal column stimulation." Nevertheless, Dr. Back opined on April 16, 2025, "He is not a good candidate for further aggressive treatment."

It is within the Commission's province to weigh all of the medical evidence and the determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter,

the Full Commission finds that Dr. Back's opinion is corroborated by the record and is entitled to more significant evidentiary weight than Dr. Blankenship's opinion. We find that the claimant did not prove a second psychological evaluation recommended by Dr. Blankenship was reasonably necessary in connection with the compensable injury.

Therefore, after reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove a second psychological evaluation recommended by Dr. Blankenship was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Supp. 2024). We therefore reverse the administrative law judge's finding, "2. Claimant's request for an independent psychological evaluation is granted." The claimant's claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The ALJ granted the Claimant's request for an independent psychological evaluation and granted the Respondents' request for an independent medical evaluation. The Respondents' appealed the ALJ's finding that the Claimant is entitled to an independent psychological evaluation. The majority has found that the Claimant is not entitled to an independent psychological evaluation. I dissent with the majority.

The majority has reversed the decision of the ALJ authorizing an evaluation and cited Arkansas Code Annotated § 11-9-508(a)(1) which states:

> The employer shall promptly provide for any injured employee such medical […] as may be reasonably necessary in connection with the injury received by the employee.

I find that Arkansas Code Annotated § 11-9-508(a)(1) is not applicable to the case at hand as the statute controls the authorization and cost of medical treatment. In my view, the administering of written neuropsychological testing does not constitute medical treatment which might trigger the application of Arkansas Code Annotated § 11-9-508. The testing is additional information to assist the treating neurosurgeon in making the best medical decision. Further, the information obtained through a neuropsychological evaluation of three written tests should not automatically override the decisions of the authorized neurosurgeon. This

would give veto power over the Claimant's medical care to someone who has never medically examined the Claimant and has spent very little time with the Claimant.

Finally, the Claimant is not currently seeking medical care. The issue on appeal involves a request for an evaluation, not medical care, therefore, this issue should be addressed under Arkansas Code Annotated § 11-9-511 or § 11-9-811. The majority has relied on Arkansas Code Annotated § 11-9-508 which will have the effect of giving the Respondent an unfair advantage in controlling the medical care received by the Claimant. Apparently, the Respondent was unhappy with the decisions and medical care of the treating physician, so they requested and received an order for an independent medical evaluation. This allows the Respondent to have the opportunity to select an evaluating physician in addition to the initial selection of a treating physician.

The proper question in this matter is whether an additional evaluation by a neuropsychologist would assist the treating physician in his medical care of the Claimant. In my view, the answer is yes and therefore, an evaluation pursuant to Arkansas Code Annotated § 11-9-511 is appropriate. The additional psychological evaluation requested by the Claimant is reasonable and necessary pursuant to Arkansas Code Annotated § 11-9-

511, and the Full Commission has the authority to grant the request. Granting the Claimant's request would ensure a fair process to both parties.

Accordingly, for the reasons set forth above, I must dissent with the majority.

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M. SCOTT WILLHITE, Commissioner