

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION CLAIM  
NO. G300449**

**SHIRLEY L. WALKER,  
EMPLOYEE**

**CLAIMANT**

**FRIENDSHIP COMMUNITY SERVICES/  
MICHILD ENRICHMENT CENTER,  
EMPLOYER**

**RESPONDENT**

**ATA WORKERS' COMPENSATION TRUST/  
RISK MG'T RESOURCES, INC.,  
CARRIER/TPA**

**RESPONDENT**

**OPINION AND ORDER FILED MAY 4, 2021**

Hearing conducted before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens, on February 3, 2021, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable C. Michael White, Attorney at Law, Little Rock, Pulaski County, Arkansas.

The respondents were represented by the Honorable Karen H. McKinney, Barber Law Firm, Little Rock, Pulaski County, Arkansas.

**INTRODUCTION**

In the Prehearing Order filed November 19, 2020, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including January 7, 2013, when the claimant sustained a compensable injury to the face.
3. The claimant's average weekly wage (AWW) was \$212.93, entitling her to weekly compensation rates of \$142.00 for both temporary total disability (TTD), and permanent partial disability (PPD) benefits.

4. The claimant requested, and the Commission granted, the claimant her one (1)-time-only change of physician (COP) request on December 18, 2020, from Dr. Barry Baskin to Dr. John Pemberton.
5. The respondents accepted this claim as compensable and have paid all appropriate medical and indemnity benefits to date.
6. The parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 4-5). Pursuant to the parties' mutual

Agreement the issues litigated at the hearing were:

1. Whether the claimant's request for additional medical treatment is related to, and reasonably necessary for, treatment of her January 7, 2013, compensable injury.
2. Whether the claimant's attorney is entitled to a controverted attorney's fee on these facts.
3. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2; T. 4-5).

The claimant contends she continues to experience problems related to her compensable injury and that additional medical care is reasonably necessary for treatment of those problems. She also contends she has received treatment in the past for which the respondents denied liability. She contends this treatment was reasonably necessary for treatment of her compensable injury and, therefore, the respondents' responsibility. In this regard, the claimant specifically contends the treatment provided by and at the direction of Dr. Carter was related to, and reasonably necessary for, treatment of her compensable eye injury and, therefore, the respondents are liable for it. The claimant specifically reserves any and all other issues for future litigation and/or determination. (T. 2-3).

The respondents contend the claimant sustained a compensable injury on January 7, 2013, and that she has received all the medical and indemnity benefits to which she is entitled by law. The claimant came under the care of Dr. Reginald Rutherford, a neurologist, who found she had reached maximum medical improvement (MMI) with no, a zero percent (0%), permanent anatomical impairment rating as of June 17, 2013. After Dr. Rutherford passed away, Dr. Michael Chesser, a neurophysiologist, assumed the claimant's care until he left his practice, at which time Dr. Barry Baskin took over her care. Dr. Baskin released the claimant from his care on March 7, 2016. When the claimant requested a follow up appointment with Dr. Baskin for continued headaches and facial nerve pain, the respondents authorized her to see Dr. Baskin on December 12, 2016. Dr. Baskin advised the claimant he had no additional treatment to offer her, and she should continue taking over-the-counter (OTC) medication, and her previously prescribed medication, Nortriptyline. The claimant advised Dr. Baskin she was having watering and matting of her left eye, for which he referred her to Dr. Monica Dellimore (now, "Hall"), an ophthalmologist at the Little Rock Eye Clinic. The respondents authorized an appointment with Dr. Dellimore, who diagnosed the claimant with dry eye, which was unrelated to her compensable injury. Thereafter, the claimant requested and received a COP to Dr. John Pemberton, A neurologist at the University of Arkansas for Medical Sciences (UAMS), who examined her on January 11, 2018. Dr. Pemberton referred the claimant to Dr. Suen, "to evaluate the left hyperesthesia, chronic pain since 2013." The claimant has already had a thorough work-up and examinations by two (2) neurologists, Dr. Rutherford and and Dr. Chesser; a neuro-ophthamologist, Dr. Andrew Lawton; and a physiatrist, Dr. Baskin, for her subjective complaints of facial numbness and pain. Further medical evaluation and treatment is not reasonably necessary, nor is

it related to her January 2013 compensable injury, especially as Dr. Baskin already advised her continued OTC medication and Nortriptyline use, as needed, is the recommended, available treatment. Finally, the respondents contend that all medical treatment the claimant has undergone after that of Dr. Pemberton is unauthorized and, also, is not reasonably necessary treatment. The respondents specifically reserve any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 3-4).

The record consists of the hearing transcript and any all exhibits contained therein and attached thereto. (Please note: The ALJ inadvertently and mistakenly included the document marked "Respondent No. 2 Exhibit 1" in the record of this claim. Although both attorneys were gracious and did not object to this document's introduction, clearly this was a mistake on the ALJ's part; should not be a part of the record of this claim; and the ALJ did not, of course, consider it in rendering the decision herein.)

### **STATEMENT OF THE CASE**

The claimant, Shirley Walker, is 56 years old. She has had specialized training as a caretaker for mental health patients, some of whom are bi-polar or schizophrenic. She was working for Friendship Community Care/Michild Enrichment Center (Friendship) in Bryant, Arkansas at the time of the subject injury in January of 2013. She since has changed jobs and is working for Job Corps. She also worked as a substitute teacher for some 30 years. (T. 10-11).

On January 7, 2013, at around 11:30 P.M. the claimant, who was 49 years old at the time, was working at Friendship with a young man who had mental problems. The young man was a cigarette smoker, and his mother wanted Friendship to help wean him off cigarettes. The young man asked the claimant for a cigarette, but when she would not give it to him, he ran at her, chased

her, pulled her hair, and hit her with his closed fist in the area of her left cheek and left eye. The claimant testified she was knocked unconscious for a time but does not know how long (T. 11-12); however, the medical record immediately below contradicts the claimant's sworn testimony in this regard.

Medical records from the early morning hours of January 8, 2013, note the claimant showed no evidence of "open wounds, bruising, or deformity." The left side of the claimant's face was swollen, her left eye was red, and she complained of a throbbing headache on the left side of her head. This first post-injury medical report concludes as follows:

Initial Assessment: Facial Injury (Left Face). No LOC [loss of consciousness]. No Speech changes. No focal numbness. No focal weakness. No unequal pupils. No repeated vomiting. No lost memory. No sev[ere] head trauma w/anticoag[ulate] use. No trouble walking without help. No repetition of words/thoughts. Person has sev[ere] HA [headache]. Person referred.

(Joint Exhibit 1 at 2) (Bracketed material added).

The claimant underwent a CT scan without contrast on January 9, 2013, that revealed she may have sustained an orbital wall fracture, so it was recommended she undergo a CT of the facial bones in question, which she underwent that same day, January 9, 2013. This second CT scan revealed the claimant had sustained a left orbital floor fracture. Otherwise, neither CT scan revealed any evidence of a serious eye or head injury. (JX1 at 7-8). A Form AR-3/Physician's Report filed with the Commission on January 9, 2013, signed by Dr. Amy Pittman, stated the claimant had reached MMI as of January 10, 2013, and she was released to return to work with no restrictions and no/zero percent (0%) permanent anatomical impairment effective January 10, 2013. (JX1 at 5-6).

When the claimant continued to complain of headaches, on February 9, 2013, she saw Dr. Reginald Rutherford, a Little Rock neurologist who has since passed away. Dr. Rutherford prescribed her Nortriptyline which improved her headaches. The claimant also saw Dr. James May at the Arkansas Otolaryngology Center on March 15, 2013, complaining of numbness on the left side of her face. Dr. May's records reveal he told her it could take a year or so for the numbness to go away, and it could be permanent. (JX1 at 10). The claimant continued to treat with Dr. Rutherford, who increased her dosage of Nortriptyline and, on June 17, 2013, Dr. Rutherford released the claimant to return to work without any restrictions or limitations, and he opined she had sustained no/0% permanent anatomical impairment. (JX1 at 12; 11-12).

Thereafter, from January 29, 2014 through October 25, 2017, the claimant presented herself to and was evaluated by a number of doctors: Dr. Michael Chesser, a neurophysiologist; Dr. Monica Dellimore (now, "Hall"), an ophthalmologist at the Little Rock Eye Clinic; and Dr. Barry Baskin, a Little Rock-area physiatrist, for continued complaints of facial numbness and pain. (JX1 at 13-33). The claimant also saw Dr. Andrew Lawton, a neuro-ophthalmologist at the Little Rock Eye Clinic. In his report of August 6, 2014, Dr. Lawton stated concerning his examination of the claimant's eyes:

At exam, her visual acuity with her current eyeglasses was 20/15 in each eye at distance and 20/20 at near. She showed no signs of fluid accumulation in her left tear sac. Her extraocular motility was full in both eyes. She had decreased sensation in her left cheek. Ms. Walker has not suffered an injury to the left eye. I found no visible cause for light sensitivity....

(JX1 at 23). Dr. Lawton said the claimant did have excess tearing which "could indicate" some damage to her nasal bone, obstructing tear drainage. He gave her a sample of artificial tears to keep her eyes moist. (JX1 at 23).

On October 12, 2015, Dr. Baskin ordered, and the claimant underwent an X-ray of her facial bones which revealed only a mild irregularity of the claimant's inferior orbital wall [orbital floor] on the left as a result of the work-related fracture, but there was: "No displaced fracture fragments...seen. No abnormal opacification of the left maxillary sinus is identified." (JX1 at 26) (Bracketed material added). In his clinic note dated March 7, 2016, Dr. Baskin stated the claimant's lower orbital wall fracture was healed and had "really resolved." His examination that day was essentially normal. He noted the claimant had been taking Nortriptyline, and she could continue that on an as-needed basis. He saw no need for the claimant to follow up with him "routinely", but said he would see her on an as-needed basis. (JX1 at 27). The claimant returned to see Dr. Baskin on December 12, 2016, and his examination revealed no new findings. Dr. Baskin referred the claimant to Dr. Dellimore "again for a detailed eye evaluation." (JX1 at 28). Dr. Dellimore examined the claimant six (6) days later, on December 20, 2016. Dr. Dellimore diagnosed her with "dry eyes" that were unrelated to the January 2013 work incident. (JX1 at 31).

Thereafter, on September 21, 2017, Dr. Baskin wrote the claimant a letter in which he advised her that her fracture had healed and – like Dr. Rutherford before him – he explained that: she had sustained no/0% impairment as a result of the January 2013 work incident; she should take "over-the-counter Tylenol or anti-inflammatories as needed" for pain; and if she "would like" she could "take the Nortriptyline 10-mg capsules 2 to 3 capsules at bedtime, that might help." (JX1 at 32). In his October 25, 2017, letter to Risk Management Resources, Dr. Baskin noted the claimant's continued complaints of numbness and pain are "completely subjective under her left eye", and she "really does not require further treatment" for these subjective complaints. (JX1 at 33).

Soon after the claimant's January 7, 2013 compensable injury, the respondents had provided her a Form AR-N advising her of her right to a one (1)-time-only COP, which she signed on February 13, 2013. (Respondents' Exhibit 1 at 4). The claimant requested the Commission to grant her a COP from Dr. Baskin to an "eye doctor" (apparently at the Jones Eye Clinic at UAMS) but, according to Ms. Pat Hannah, the director of the Commission's Cost Containment Division, Jones Eye Clinic would not agree to see her, but suggested to the Commission that in light of the nature of the claimant's injury, she should see Dr. John Pemberton, a neurologist at UAMS. The Commission granted the claimant's COP request to Dr. Pemberton. (RX1 at 1-3). The claimant saw Dr. Pemberton on January 11, 2018. Dr. Pemberton evaluated the claimant, noted she had "hyperthesia" [a subjective complaint defined as "increased sensitivity"] with respect to her left eye. He advised her UAMS could offer her free eyeglasses, and mentioned a referral to a "Dr. Suen" at UAMS, with the claimant to follow-up with him in a year. (JX1 at 34-43) (Bracketed material added).

The claimant testified she never saw a Dr. Suen and did not know Dr. Suen. She said she had been seeing a "Dr. Carter" at UAMS on her own. However, the claimant's attorney requested all of the claimant's medical records from UAMS, and did not receive any medical records of a "Dr. Carter." Therefore, the hearing record contains no medical records of Dr. Carter from UAMS. There is no mention of any referral from Dr. Pemberton or any other of the many physicians the claimant has seen referring her to a Dr. Carter at UAMS. The claimant testified she wanted the Commission to allow her to continue to treat with Dr. Carter at UAMS. (T. 18-22; 8; 5-9; 55-59). The claimant sustained a prior work-related injury to her lower back on July 15, 2000. At that time Dr. Collins apparently had indicated she was having balance problems. (T. 47; Respondents'



Exhibit 2 at 1-12). This lower back claim was the subject of prior litigation which culminated in a Full Commission opinion filed August 30, 2012. (RX2 at 1-12). In this opinion the Full Commission noted the claimant's history and extended period of treatment for a lower back strain the Full Commission itself characterized as "relatively minor." (RX2 at 10-11). The Full Commission reversed the ALJ and found the claimant's request for "additional medical treatment from Dr. Collins, or any physician, for that matter, is not reasonably necessary treatment for her July 15, 2000, compensable back injury." (RX2 at 11). The claimant, who was pro se, appealed the Full Commission's opinion to the Arkansas Court of Appeals. The court of appeals affirmed the Full Commission's opinion on March 6, 2013. (Respondents' Exhibit 3, 1-5).

## **DISCUSSION**

### **The Burden of Proof**

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2020 Lexis Supp.). The claimant has the burden of proving, by a preponderance of the evidence, that she is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 119-704(c)(4); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and

conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers' Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

I am aware the Full Commission is inclined to find claimants are more often than not entitled to additional medical treatment. However, if ever there were a case where both the applicable law and the facts conclusively demonstrate the claimant has failed to meet her burden of proof in demonstrating the requested additional medical treatment is related to and constitutes reasonably necessary medical treatment for her compensable injury, this is most definitely that case.

Pursuant to *Ark. Code Ann.* Section 11-9-514(b), any and all medical treatment the claimant has or may have undergone after she saw Dr. Pemberton constitutes unauthorized medical care, and the respondents are not responsible for the payment of any and all such treatment. The

claimant signed a Form AR-N on February 13, 2013. She was aware of her COP rights, as is demonstrated by the fact she requested, and the Commission granted, her COP request from Dr. Baskin to Dr. Pemberton. While the claimant said she requested the Commission to send her to “an eye doctor,” as Ms. Hannah’s emails prove the Jones Eye Clinic at UAMS refused to see the claimant, and instead recommended she be sent to Dr. Pemberton. Consequently, the Commission’s COP order granted the claimant’s COP request from Dr. Baskin to Dr. Pemberton.

Moreover, the overwhelming preponderance of the evidence conclusively demonstrates the claimant has failed to meet her burden of proof in showing that her requested treatment with “Dr. Carter,” or any other physician for that matter, is related to or constitutes reasonably necessary treatment for her January 2013 compensable injury. This is especially true since, according to the claimant, the Dr. she is requesting to see, Dr. Carter, is “an eye doctor” and the medical evidence proves the claimant did not in fact even injure her eye in the January 2013 incident – an incident which occurred over eight (8) years ago.

First, I am compelled to note for the record the claimant was not a particularly credible, forthcoming witness. On direct examination her testimony was hyperbolic, and often conflicted with the medical evidence of record. For example, the claimant was adamant she lost consciousness as a result of the work incident. The medical record from the claimant’s first visit to the doctor after the incident clearly contradicts her sworn testimony in this regard. (T. 11-12; JX1 at 2). The claimant testified she saw, or has been seeing, a “Dr. Carter” at UAMS, which is the physician with whom she requests she be allowed to treat. However, although the claimant testified under oath, she has seen Dr. Carter, the claimant’s attorney candidly admitted that although he had requested all of UAMS’s medical records (see, e.g., JX1), none of the records he

received from UAMS were from a Dr. Carter. (T. 18-22; 8; 5-9; 55-59). In general, the claimant's own testimony was of little evidentiary value, especially when compared to the medical evidence – and the lack thereof with respect to Dr. Carter – in the record. (T. 10-24; 54-55). Likewise, on cross-examination the claimant was argumentative, and not forthcoming. (T. 24-49; 52-54).

Second, and significantly as is demonstrated by the “Statement of Facts”, *supra*, the claimant has been evaluated by numerous doctors of various specialties, none of whom have opined or even recommended she requires any additional medical treatment. The claimant has seen two (2) neurologists; a neurophysiologist; a physiatrist, an ophthalmologist, and a neuro-ophthalmologist – all of whom thoroughly evaluated her, provided her excellent medical care – and none of whom have opined she requires any additional medical evaluation or treatment for her compensable injury.

Third, the neuro-ophthalmologist who evaluated the claimant, Dr. Lawton, found her vision to be within normal limits (in fact her near vision was 20/20), and he flatly stated: “Ms. Walker has not suffered an injury to her left eye.” (JX1 at 23).

Fourth and finally – and perhaps most dispositively – both Drs. Rutherford and Dr. Baskin released the claimant to return to work with no restrictions and no/0% impairment. Both Drs. Rutherford and Baskin also made it clear to the claimant the only treatment for her subjective complaints of numbness and pain was continued use of OTC Tylenol and anti-inflammatory medication, as well as her prescribed Nortriptyline on an as-needed basis. Apparently, the claimant has not needed to take the prescription Nortriptyline, as she admitted on cross-examination. She testified she was no longer taking it because it did not help her headaches – which, by the way, contradicts the medical records of both Dr. Rutherford and Dr. Baskin. Both Drs. Rutherford and

Baskin opined the claimant did not require any additional medical treatment other than taking these medications. In fact, Dr. Baskin's recommendation in this regard was made in both September 2017 and October 2017. (JX1 at 33).

It is not a coincidence that all of the doctors who have evaluated and treated the claimant for well over eight (8) years now have not offered her any additional medical treatment. The preponderance of the medical and other evidence of record demonstrates the claimant's compensable injury has long since healed; and that if she, indeed, is still experiencing the subjective complaints of numbness and pain, these complaints have not prevented the claimant from work, nor has any physician opined she requires any additional treatment other than taking the OTC and prescription Nortriptyline. Indeed, the medical record reveals the claimant's last visit to a physician for evaluation and/or treatment of her compensable injury was when she saw Dr. Pemberton at UAMS on January 11, 2018 – over three (3) years ago. There exists no evidence in the record the respondents have ever refused to pay for the claimant's prescription medication.

Therefore, for all the aforementioned reasons, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this claim.
2. The stipulations contained in the Prehearing Order filed November 19, 2020, hereby are accepted as facts.
3. The claimant was provided a Form AR-N on February 13, 2013, and the parties stipulated she received her one (1)-time-only COP from Dr. Baskin to Dr. Pemberton pursuant to the COP order of December 18, 2020. There exists no evidence in the record whatsoever that Dr. Pemberton ever referred the claimant to "Dr. Carter," or that "Dr. Carter" ever treated the claimant as the claimant testified. Consequently, any and all of the medical treatment the claimant sought on

her own or received after her COP to Dr. Pemberton constitutes unauthorized treatment, and the respondents are not responsible for paying for any such treatment.

4. The claimant has failed to meet her burden of proof in demonstrating she is entitled to any additional medical treatment for her compensable injury of January 7, 2013 – an injury which occurred over eight (8) years ago, and an injury the overwhelming preponderance of the medical evidence reveals has long since healed.
5. The claimant’s injury occurred on January 7, 2013. Dr. Rutherford released her to return to work on June 17, 2013 with no work restrictions, and he opined she had sustained no/0% permanent anatomical impairment as a result of the compensable injury. Dr. Baskin, the physician who evaluated and treated the claimant from August 4, 2014 through October 25, 2017, agreed with Dr. Rutherford, and has opined the only treatment, if any, the claimant requires for her subjective complaints of numbness and pain are OTC Tylenol and anti-inflammatory medication, and the prescribed Nortriptyline, and only on an as-needed basis. Indeed, there exists no medical evidence to the contrary.
6. The claimant’s attorney is not entitled to a fee on these facts.

Therefore, for all the aforementioned reasons, this claim hereby is respectfully denied and dismissed.

**IT IS SO ORDERED.**

---

Mike Pickens  
Administrative Law Judge

MP/mp