BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G601838

TAMIE WALTHERS, Employee	CLAIMANT
AREA AGENCY ON AGING WESTERN ARKANSAS, Employer	RESPONDENT #1
RISK MANAGEMENT RESOURCES, Carrier/TPA	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED JUNE 7, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

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

Respondent #1 represented by KAREN H. MCKINNEY, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas; although not participating in hearing.

STATEMENT OF THE CASE

On March 11, 2021, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 4, 2021, and a Pre-hearing Order was filed on that same date. 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. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury on September 23, 2016 to her lumbar spine.

4. The claimant is entitled to a weekly compensation rate of $646.00 for temporary total disability and $485.00 for permanent partial disability benefits.

While the parties did not object to Stipulation Number 3 at the time of the hearing, it has become apparent that a clerical error exists in that the initial date of injury was not September 23, 2016, and was in fact January 23, 2016. This administrative law judge contacted both parties and all are in agreement that the proper date of injury is January 23, 2016.

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

1. Whether claimant's urinary and bowel problems are a compensable consequence of her compensable back injury.

2. Whether claimant is entitled to treatment for her urinary and bowel problems.

3. Whether claimant is entitled to temporary total disability from March 12, 2019 to a date yet to be determined.

4. Attorney's fee.

Claimant's contentions are:

> "a. The claimant contends that her compensable back injury and treatment has played a causal role in her subsequent urinary and bowel problems and that those problems have reasonably required medical treatment and have resulted in temporary total disability. She also contends her attorney is entitled to a statutory fee on any appropriate benefits that may be awarded."

Respondent No. 1's contentions are:

> "Respondent No. 1 contends that the claimant sustained a compensable injury on January 23, 2016 for which she has received all appropriate benefits. The claimant has been released at MMI by Dr. Seale and Dr. Roman. She underwent an FCE on April 10, 2019 which found that the claimant could perform work in a light classification of work as defined by the U.S. Department of Labor Guidelines. Respondent No. 1 offered the claimant a position of case manager that falls within her permanent restrictions with wages equal to or greater than she was earning at the time of her injury and the claimant refused this employment. The claimant complained of urinary and bowel issues following her surgery with Dr. Seale for which Respondent No. 1 provided medical treatment for said complaints. The claimant's complaints

> have not been verified thorough objective testing with the urologist and there are inconsistencies in the claimant's alleged urinary complaints. Finally, Dr. Roman advised in June 2020 that the claimant did not require any additional medical treatment for her compensable injury."

Respondent #2 deferred to the outcome of litigation and waived its appearance at the hearing.

The claimant in this matter is a 51-year-old female who was employed by the respondent as a home health RN when she sustained a compensable injury to her lumbar spine on January 23, 2016. The claimant's compensable lumbar spine injury was treated by Dr. Kyle Mangels. On September 15, 2016 Dr. Mangels performed a bilateral lumbar laminectomy at L4-5 and L5-S1, total radical diskectomies bilaterally at L4-5 and L5-S1, and bilateral posterior lumbar interbody fusions at L4-5 and L5-S1 on the claimant.

The claimant continued to have difficulties after surgical intervention including severe back pain that radiated into her legs bilaterally accompanied by bilateral numbness and leg weakness. The claimant began to treat with Dr. Justin Seale and after examination, MRI, and CT scan of the claimant's lumbar spine, Dr. Seale performed surgery on the claimant on September 25, 2018. Following is a portion of that operative report found at Claimant's Exhibit #1, page 28:

> PREOPERATIVE DIAGNOSIS:
> 1. Implants, painful, posterior segmental, lumbar spine, L L4-S1
> 2. Status post L L4-S1 posterior segmental instrumented fusion.
>
> POSTOPERATIVE DIAGNOSIS:
> 1. Implants, painful, posterior segmental, lumbar spine, L4-S1
> 2. Status post L4-Sq posterior segmental instrumented fusion.
> 3. Durotomy, dorsal, L4-5 due to scarring to cross-link, portion of procedure
>
> PROCEDURE:
> 1. Removal of posterior segmental instrumentation, L4-S1
> 2. Exploration of fusion, posterior, L4-S1
> 3. Durotomy repair requiring laminectomy, L4-5

The claimant was seen by Dr. Seale on October 24, 2018. The report from that visit found at Claimant's Exhibit #1, page 31, in part states:

> **History**
> 49 year old female status post implant removal complicated with dural tear with S1 II nerve root type issues postoperatively. Since surgery she has had bladder retention or neurogenic bladder. She also has had saddle anesthesia. She is having pain down the right leg. Overall doing very bad.
>
> **Examination**
> Patient reports saddle anesthesia or bowel bladder issues. Gait is stable with good coordination and balance. The incision is well healed without signs of infection.
>
> **Assessment**
> 1. Status post L4-S1 and removal with dural tear and postop sacral nerve root issues, 9/25/18
> 2. Status post instrumental interbody fusion, outside surgeon, 5/26/17

An MRI was performed on the claimant the next day and the report from that diagnostic test in part states: "Close apposition of multiple nerve roots to the dorsal dura at the level of L4-5 with mild enhancement may represent arachnoiditis."

The claimant was again seen by Dr. Seale on December 10, 2018. A portion of that medical record states: "C last note for details but the patient has had a postop complication. Most likely arachnoiditis with neurologic defects. She is having a [sic] spend a lot of her time waning flat."

On March 11, 2019 Dr. Seale again saw the claimant. Following is a portion of that medical report found at Respondent 1's Exhibit #1, page 108:

> Assessment:
> 1. Status post L4-S1 and removal with dural tear and postop sacral nerve root issues, 9/25/18 with arachnoiditis
> 2. Status post instrumented interbody fusion, outside surgeon, 5/26/17
>
> Plan:
> Refill Nucynta. This is required to help with her arachnoiditis which is a chronic pain issue. Due to the chronic pain continuing and need for refills I recommend referral to Dr. Roman. Not sure

if he can help arachnoiditis not I would like his opinion.

On September 10, 2019 the claimant was seen by Dr. Carlos Roman. Following is a portion of that medical record from Dr. Roman's clinic note found at Respondent 1's Exhibit #1, page 157:

> **HISTORY OF PRESENT ILLNESS:**
> The patient is a 50-year-old female who presents today for routine follow up. She had surgery by Dr. Mangles in 2016 but continued to have significant low back pain. She underwent a second surgery by Dr. Seale in September of 2018 which was complicated by a dural tear which required surgical closure. She had a headache after the surgery. She is dealing with continuing burning pain in her perineum and her legs. She has had urinary incontinence. We sent her to a urologist for consultation to see if they could ascertain why that is occurring. She is being treated for a urinary tract infection. They are going to do an ultrasound of her bladder. We will see if they can find a way to help her deal with her incontinence.

On October 23, 2019 the claimant was seen at BH Urology Clinic Fort Smith by Lauren Satterfield, PA. Following is a portion of that progress note found at Respondent 1's Exhibit #1, page 161:

> **Reason for Visit:**
> Urinary Tract Infection (recurrent)
> Pt returns for follow-up for urinary incontinence. She states that she had a work injury that was treated in LR by Dr. Seale. He then had to remove the hardware in her back and she had some injury to the spinal cord. Since that time, she has had loss of bladder and bowel control. She states that she does try to void on her own in the toilet but does not void much at all. She mostly leaks without having the sensation that she needs to void. She states that she ran out of catheters and did not get anymore. She states that she did call however there is no documentation of this. She would like the speedy cath from Coloplast. She did not have any trouble passing the catheters. She states that she has noticed she is leaking through more depends after doing the self-catheterization. She does not think that she got very much out at a time. She denies light pink-tinged her urine one day. She denies having fever nausea. She does have some back pain is unknown if it is her back or her kidneys. She did finish out her antibiotic. She has not felt very full in a while. She has run out of her Pyridium at this time. She is seeing pain management.

During that visit a urinary culture was performed and additional catheters were ordered for the claimant.

On January 22, 2020 the claimant was again seen by Lauren Satterfield, PA. Following is a portion of that medical record found at Respondent 1's Exhibit #1, page 167:

> **Reason for Visit:**
> Urinary Tract Infection
> Pt returns for follow-up for urinary incontinence. She states that she had a work injury that was treated in LR by Dr. Seale. He then had to remove the hardware in her back and she had some injury to the spinal cord. Since that time, she has had loss of bladder and bowel control. She states that she does try to void on her own in the toilet but does not void much at all. She mostly leaks without having the sensation that she needs to void. Patient also has no control over her bowels or any sensation when she needs to have a bowel movement. Patient has been using the catheters 4 times a day. States that this has helped significantly. She is down to only 2 depends a day. She has not had the odor that she had before. She not been treated for any infections since she was here last. She denies have any pain. She denies having any trouble passing catheters. She is not had any blood in the urine. She denies having fever but does have some nausea. She does drink water but is not drinking enough. She continues to have leakage of urine but mostly at night. She does use Pyridium on an as-needed basis.

The claimant was sent to UAMS for a second opinion regarding pain management and bowel and bladder dysfunction. The claimant was seen by Dr. Yen T. Nguyen who is a resident. Following is a portion of Dr. Nguyen's report from his second opinion examination of the claimant found at Respondent 1's Exhibit #1, page 170:

> **History of Present Illness:**
> This is a 50 y.o. female who was referred to UAMS PM&R Clinic for management of arachnoiditis/cauda equina management. Worker comp manager and lawyer were also present during this visit. Patient states she injured her back in a work related incident in 2016. She was an RN and while turning patient to photograph a wound behind her back, she felt a "tear" and intense pain in her low back when the patient rolled back onto her. She was seen by a local provider and was told that she has a tear in her disc. After trying muscle relaxant, physical therapy with no significant relief, she was referred

to a surgeon where a discogram was done for diagnostic purpose. Her back pain worsened after this procedure and she eventually decided to proceed with surgery, which was performed in 2016. After this surgery, she continued to experience severe axial low back pain with radiculopathy to LLE. Patient states radicular pain felt as if there are "fire ants crawling on my thigh, lancinating like someone cutting through me." Radicular pain in LLE would come on when she lays supine on her back, also when she's sitting. She reports similar symptom on the right side but this only occurs if she stands for too long. Axial back pain is constant, unrelenting. She has tried multiple medications with no significant relief (Gabapentin, Lyrica, Amitriptyline, welbutrin) and TENS unit. She reports adverse reaction to Gabapentin and Lyrica (vomiting on Gabapentin and visual hallucination on Lyrica).

Failing to get any relief, she then consulted with another spine surgeon, Dr. Seale who surgically removed the hardware in her back in September 2018. When she woke up from this surgery, she reports loss of sensation in the perineum/genital area and buttock. She also could not control her bowel or bladder. She was referred to pain specialist (Dr. Roman) for ongoing management of chronic low back pain (this did not improve after second surgery) and urology for management of neurogenic bladder.

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Assessment:
Tammie Walthers is a 50 y.o. with chronic back pain, radiculopathy after injured her back in a work related incident. She had spinal fusion at L4-5 and L5-S1 in 2016, subsequently needed revision to remove hardware due to persistent severe back pain and ended up with arachnoiditis post operatively.

1. Adhesive arachnoiditis	
2. Neuropathic pain	capsaicin (ZOSTRIX) 0.025 % cream
3. Neurogenic bladder	capsaicin (ZOSTRIX) 0.025 % cream
4. Neurogenic bowel	Ambulatory Referral to Urology
	bisacodyL (DULCOLAX) 10 mg supp

Plan:
1. Discussed proper body mechanic with lifting, turning. Avoid heavy lifting.
2. Discussed pathophysiology of arachnoiditis, neurogenic bowel and bladder.
3. Neurogenic bladder: external referral to urology for urodynamic study. This will enable an objective evaluation of patient's bladder function and will be in building treatment options (choice of medications to use).
4. Neurogenic bowel: relied on gastro-colic reflex to empty bowel in the morning, not currently on any laxative or suppository.

> Recommend starting Dulcolax suppository to help bowel empty fully and prevents accidents during the day.
> 5. Pain control: follow up with pain specialist. Capsaicin cream can be used for management of neuropathic pain. Continue Cymbalta.

Dr. Nguyen's attending physician, Dr. Thomas S. Kiser, also added an addendum to Dr. Nguyen's report found at Respondent 1's Exhibit #1, page 173. A portion of that addendum titled PM&R Attending Addendum is as follows:

> Tammie Walthers was seen and examined in clinic with Dr. Ngueyn -PGY4. I verified the main clinical findings. I agree and contributed to the above assessment and plan. I make the following additions to the note: Mr [sic] Walthers has lumbar/sacral nerve root arachnoiditis based on MRI and findings on exam after her last spine surgery. This has resulted in sensory changes at L5 to S5 nerve roots with weakness and neurogenic bowel and bladder. Her rectal exam shows low tone and loss of sensation except for deep pressure on R and no voluntary motor strength….
>
> Bladder management with CIC to maintain volumes in 400-600 cc range is recommended to avoid over distention. A urodynamics study is needed to assess for possible lower motor neuron bladder and management options as she may have some bladder control and may respond to medication management.
>
> Bowel Management is being managed with gastro-colic reflux with toileting after AM coffee but can be supplemented with a bisacodyl suppository with Dulcolax or magic bullet to empty the descending colon on regular basis.

On March 25, 2020, the claimant was seen at WR Ozark Urology Fayetteville by Dr. John Brizzolara. Following is a portion of that medical record found at Respondent 1's Exhibit #1, page 177:

> **History of Present Illness**
> Nice white female who had a back injury at work. She surgically underwent spine surgery that required hardware implantation. She had quite a bit of discomfort from her hardware implantation, they took her hardware out. Apparently there was a dural injury at that time and she developed loss of sensation from waist down, fecal incontinence, and urinary incontinence. She was seen by a urologist in Fort Smith that discovered her to have urinary retention. He started her on self catherization, 4 times a day that dramatically decreased her diaper use, but she still uses diapers now. There is not sensation of urgency or frequency.

Dr. Brizzolara assessed the claimant with "urinary incontinence secondary to dural injury on removal of hardware in the back." At that time Dr. Brizzolara ordered a urodynamic study.

On June 3, 2020 the claimant returned to see Dr. Brizzolara for an evaluation of her urodynamic study. Following is a portion of that medical record found at Respondent 1's Exhibit #1, pages 180-182:

> **History of Present Illness**
> Ms. Walther is a 50-year-old white female who had surgical spine surgery and then developed loss of sensation from the waist down, fecal incontinence, and urinary incontinence. In Fort Smith they found that she had urinary retention and she was started on self cath 4 times a day, which decreased her diaper use but was still having incontinence. I initially saw her on March 25 and recommended that she shorten the period in between the incontinence and go to 6 times a day. I stated I would make further recommendations depending on how she did with that. I saw her back on May6 15 and she underwent a urodynamic test. She is in for the urodynamic test results. As far as doing the catheterization 6 times a day it has improved her incontinence, but she still leaks some since we have seen her. She did have an episode of discomfort in her bladder, she felt she had a UTI so we cultured her urine.
>
> ***
>
> Urodynamic test:
> Bladder was filled at approximately 35 to 36 cc per second. Her sensation of filling she never had and never really has any strong desires to void. With Valsalva she never exhibited any stress incontinence. She did show a gradual detrusor pressurize. At 500 cc she laked [sic] urine and lost a significant amount of urine. She then states she continued to leak urine without control and we did a PVR bladder scan and it was 0.
>
> ***
>
> **Assessment**
> **Assessed**
> 1. Urinary incontinence (788.30)(R32)
>
> Urinary incontinence, undetermined because there is a discrepancy between the urodynamic study and the actual description of the incontinence and that fact that she does catherization 6 times a day and does not really leak.
>
> **Plan**
> We will repeat urodynamic study and do a cath-residual urine.

On June 17, 2020, Dr. Roman authored a clinic note regarding the claimant. It does not appear that Dr. Roman actually saw or examined the claimant, but instead had recently received surveillance video of the claimant provided by the respondent in this matter. I do agree with Dr. Roman that the videos in evidence do show the claimant to be far more capable of physical activity than her medical records and testimony at the hearing indicate. However, I disagree with a portion of Dr. Roman's clinic note that follows at Respondent 1's Exhibit #1, page 183:

> She has subsequently been worked up by a urologist to assess whether she has urinary incontinence. The work-up done most recently in June of this year by Dr. John Brizzolara revealed that there may be some urinary incontinence but there is discrepancy between the urodynamic study and the actual description of the incontinence and the fact that she does catherization six times a day but does not have a leak so she does not appear to have a neurogenic bladder. There is certainly no clinical evidence other than her complaint that would substantiate that. Again, MRI and CT of her spine post surgery demonstrate no objective rationale that she would have such an outcome. A dural tear is a common complication of surgery and it has healed without sequela.

There is evidence other than claimant's complaints of urinary and bowel difficulties. The MRI that was performed on October 24, 2018 and the opinions of Dr. Seale, Dr. Nguyen, Dr. Kizer, and Dr. Brizzolara all support a finding of urinary and bowel difficulties primarily through the objective findings of that MRI. Clearly, Dr. Roman was upset with the video surveillance he witnessed; however, objective medical evidence reviewed by multiple other doctors supports the claimant's contention that her urinary and bowel problems are a compensable consequence of her January 23, 2016 compensable lumbar spine injury and I find as such. It is clear that there was some discrepancy in the only urodynamic study performed. However, Dr. Brizzolara clearly wanted to move forward with additional testing. The claimant has also previously had urinary difficulties. A medical record regarding those difficulties dated

November 16, 2013 is found at Respondent 1's Exhibit #1, pages 1-3. I do not believe that these prior difficulties are related to her current urinary or bowel issues.

The claimant has also asked the Commission to determine if she is entitled to medical treatment for her urinary and bowel difficulties. They are a compensable consequence, and as such, claimant is entitled to reasonable and necessary medical treatment. The claimant was not able to have the repeat urodynamic study and a "cath-residual urine" as requested by Dr. Brizzolara. I believe that is reasonable and necessary medical treatment for the claimant. That additional testing shall be provided by the respondent along with other reasonable and necessary medical treatment for the claimant's urinary and bowel difficulties which are a compensable consequence of her compensable low back injury.

The claimant has also asked the Commission to determine if she is entitled if she is entitled to temporary total disability benefits from March 12, 2019 to a date yet to be determined. On March 11, 2019, Dr. Seale states in his medical record that "the patient is at maximum medical improvement." However, in that same report Dr. Seale goes on to state, "I will continue the patient off work until the results of her functional capacity exam are available." The claimant's functional capacity evaluation was performed at the Functional Testing Centers, Inc. in Mountain Home, Arkansas, on April 10, 2019. The results of that functional capacity evaluation found the claimant to have put forth reliable and consistent effort with 52 of 53 consistency measures within expected limits. That report also indicated that the claimant "demonstrated an occasional bimanual lift carry of up to 25 pounds. She also demonstrated the ability to perform lifting up to 10 pounds on a frequent basis and up to negligible amounts on a constant basis." Dr. Seale authored a letter dated April 17, 2019. In the body of that letter Dr. Seale states:

> "I was able to review the patient's functional capacity evaluation from 4/10/19. The patient demonstrated a reliable effort with 52/53 consistency measures within expected limits. This places the patient in a right [sic] classification of work as defined by the U.S. Department of Labor Guidelines over the course of the normal work day.
>
> I recommend return to work with permanent restrictions as defined by the reliable functional capacity exam.

While the claimant has seen multiple other doctors since Dr. Seale authored that letter on April 17, 2019, no other doctor has removed the claimant from work. This was agreed to by the claimant in her cross-examination testimony at the hearing in this matter. I also note that I find no indication in the medical record that the claimant was removed from work after being returned to work by Dr. Seale.

On September 24, 2019, Rebekah Lynch, the Director of Human Resources for the respondent, authored a letter to the claimant. That letter is found at Respondent 1's Exhibit 2, pages 1-2. In that letter, the claimant is offered a position with the respondent with an annual salary of $55,016.00 in the position of a case manager at the respondent's place of business. The position was to be full time, Monday through Friday from 8:00 a.m. to 5:00 p.m. That offer of employment included a general description, specific responsibilities, job qualification requirements and physical demand requirements, all of which appear to be within both the claimant's educational and experience qualifications and within work restrictions that were placed on the claimant through the FCE that was confirmed by Dr. Seale. The respondents also included a certified mail return receipt for that job offer and it appears that it was delivered to the claimant on September 27, 2019. I will also note that the claimant admitted in testimony that she did receive the offer of employment.

On direct examination the claimant was asked about that offer of employment from the respondent as follows:

> Q Did you get a document from them offering to return you to work?
>
> A I got an offer of employment page with two handbooks in it.
>
> Q Did they tell you what your job was going to be in that offer?
>
> A There was the title, the job title. I think it was an RN, kind of like what I was doing before, but like an RN case manager, maybe, but there was no actual description.
>
> Q Of what the job entailed?

A Uh-huh.

Q And you didn't call and - -

A I thought it was mistake. I thought somebody just pulled my resume, honestly.

Q So you didn't respond?

A. No. Not at all.

On cross-examination the claimant was also asked about the job offer. Following is a portion of that cross-examination testimony:

Q You didn't call about the job; correct?

A No, ma'am.

Q All right. So you didn't know any of the details about the job, although they said all and find out and come in?

A I didn't see anything that said call and find out, that I recall.

Q All right.

A I just thought it was a mistake.

The claimant failed to prove that she is entitled to temporary total disability benefits from March 12, 2019 to a date yet to be determined. The claimant was found to be at maximum medical improvement on March 11, 2019 regarding her compensable back injury and while the claimant has continued to have medical effects, specifically urinary and bowel dysfunction, no other physician or medical provider has removed the claimant from work status. It is also clear that the respondent made the claimant a bona fide job offer within her physical restrictions on September 27, 2019. The claimant completely ignored that offer of employment from the respondent.

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 witnesses

and to observe their 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 February 4, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact. It should be noted that the initial injury date is January 23, 2016, not September 23, 2016 as set forth in Stipulation Number 3 due to clerical error. The correct injury date of January 23, 2016 has been agreed to by both parties after the hearing.

2. The claimant has proven by a preponderance of the evidence that her urinary and bowel problems are a compensable consequence of her compensable back injury.

3. The claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment for her compensable consequence urinary and bowel difficulties, including a repeat urodynamic study and a "cath-residual urine" test as requested by Dr. Brizzolara.

4. The claimant has failed to prove that she is entitled to temporary total disability benefits from March 12, 2019 to a date yet to be determined.

5. The claimant has failed to prove that her attorney is entitled to an attorney's fee in this matter.

ORDER

The respondent shall pay the costs associated with reasonable and necessary medical treatment for the claimant, including a repeat urodynamic study and a "cath-residual urine" test as requested by Dr. Brizzolara.

IT IS SO ORDERED.

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HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE