

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G300449

SHIRLEY L. WALKER,
EMPLOYEE

CLAIMANT

FRIENDSHIP COMMUNITY SERVICES/MICHILD
ENRICHMENT CENTER, EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 4, 2022

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

Claimant appears *pro se*.

Respondents represented by the HONORABLE KAREN H. McKINNEY,
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 May 4, 2021. 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. The Full Commission finds that treatment provided by Dr. Carter at the UAMS Neurology Clinic was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

I. HISTORY

The record indicates that Shirley Walker, now age 57, became employed with the respondents, Friendship Community Care, on May 24, 2011. Ms. Walker testified that her job for the respondent-employer was to provide care to a mental health patient. The parties stipulated that the employment relationship existed at all pertinent times, including January 7, 2013. The parties stipulated that the claimant “sustained a compensable injury to her face” on January 7, 2013. The claimant testified on direct examination:

Q. Did you sustain an injury on [January 7, 2013]?

A. Yes.

Q. Okay. Tell the judge what happened.

A. The young man, you know, he was on some kind of special program that he had to follow – like a cigarette....So he woke up one night, and I couldn't give him a cigarette ... So he got mad at me....He deliberately attacked me....He hit me real hard, because he's a real big guy. And I fell out and I didn't know anything else....They took me to the hospital because I couldn't see anything.

According to the record, the claimant treated at Concentra Health Centers on January 9, 2013:

Patient is a 48 year old female employee of Friendship Community Care who complains about her Eye which was injured on 1/7/2013....

The patient suffered a direct blow [to the] orbital region on left. The pain began immediately.

A physician assessed “Corneal abrasion,” “Eye pain,” and “Head injury.”

A CT of the claimant's head was taken on January 9, 2013 with the impression, "Opacification of the left maxillary sinus could be due to left inferior orbital wall fracture. Dedicated CT of the facial bones is recommended. No intracranial abnormality."

A CT of the facial bones was also taken on January 9, 2013:

FINDINGS: There is a fracture in the floor of the left orbit. A fracture fragment measuring up to 10 mm in transverse dimension on coronal reconstructed image is seen displaced inferiorly into the left maxillary sinus. This is displaced inferiorly by up to a maximum of 4 mm. Mixed density material is noted in the left maxillary sinus most compatible with blood. There is some herniation of orbital fat through the fracture defect in the left orbital floor, however, the inferior rectus muscle does not extend through this defect. Smooth focal areas of mucosa, possibly mucous retention cyst or polyps are noted in the right maxillary sinus.
IMPRESSION: Left orbital floor fracture.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on February 13, 2013. The claimant wrote on the Accident Information section of the Form AR-N, "Client hit me on left side of my face and pulled my hair."

The impression of Dr. James T. May IV on March 15, 2013 was "Orbital floor fracture....She is healing well from her orbital floor fracture with no diplopia or enophthalmos. I discussed with her that the numbness she has over the left cheek can take up to a year to resolve and could potentially be permanent. I instructed her to call if she develops any diplopia. I can see her back as needed."

Dr. Reginald J. Rutherford noted on April 23, 2013, “Ms. Walker is seen in followup. She is improved with the increased dose of nortriptyline to 25 mg q.h.s....This will be continued. She does not require prescription. She will be seen in followup in 2 months. She will likely be at maximum medical improvement at that juncture.”

The claimant followed up with Dr. Rutherford on June 17, 2013: “Posttraumatic headaches remain improved with nortriptyline 25 mg at bedtime. This has been well-tolerated. She is at maximum medical improvement. There is no recommended impairment rating or workplace restriction. Continued use of nortriptyline is recommended. She will be seen in followup for medication supervision in 6 months. Prescription for nortriptyline was issued.”

Dr. Michael Z. Chesser reported on January 29, 2014:

Ms. Walker is a 49-year-old woman who suffered an injury at work on January 7, 2013. She was previously evaluated and treated by Dr. Reginald Rutherford, who passed away in late October. She states that she was punched in the face by a client and suffered a left orbital fracture....She was referred because she was having daily bifrontal headaches. She was using naproxen frequently for the headache, and she had not had any prior history of headache....She has had some persistent numbness and tingling in the territory of the infraorbital nerve over the cheek, and she was having some aching and sharp shooting pain in this region. This has worsened slightly since the last time she saw Dr. Rutherford. She has been on nortriptyline 25 mg at bedtime for headache prevention, and it has been helping quite a bit with the headache but the pain over the cheek has worsened....

IMPRESSION: 1. Posttraumatic headaches, improved on nortriptyline.
2. Neuralgia, distribution of the left infraorbital nerve secondary to her blow-out fracture.
3. She complains of worsening of her blurred vision, and she relates this to the accident. Her previous ophthalmology exam by Dr. Dellimore suggested that this was all due to a refractive error.

Dr. Chesser planned for an evaluation by Dr. Lawton, and an increase in the dosage of nortriptyline.

Dr. Chesser reported on March 23, 2014:

Ms. Walker returns for followup posttraumatic headaches and she is doing very well on increase in nortriptyline dosage. She is presently taking 30 mg at bedtime and she has not had any significant headaches in the last month. She complains of persistent numbness and tingling in the left cheek in the distribution of the infraorbital nerve and also she has intermittent twitching of the left upper lid. Otherwise she is feeling fine. She recently saw Dr. Lawton who evaluated because of her complaint of blurred vision and he could not find any ocular pathology....

Dr. Chesser's impression was "Posttraumatic headaches, improved."

Dr. Barry D. Baskin evaluated the claimant on August 4, 2014:

Ms. Walker is a 49 year old lady from North Little Rock with a history of fairly good health. She was working as a caregiver at Friendship Community Care Center 1/7/13 when an agitated patient hit her with his fist in the left eye. She sustained immediate eye trauma. She was found to have a left orbital floor fracture. She has had multiple evaluations. She has developed posttraumatic headaches. She has been seen by Dr. Reginald Rutherford and was treated with Nortriptyline at bedtime with good results. Dr. Chesser took over for Ms. Walker once Dr. Rutherford passed away and now Dr. Chesser has left his practice. I have been asked to cover her for medical management. She is back at work and

doing fairly well with the exception of left frontal headaches around the left eye and occasional left blurred vision. She also has light sensitivity on the left....

PLAN: We will continue Nortriptyline 30 to 40 mg at bedtime. I will see her back in 6 months. She still has a few refills from Dr. Rutherford's office and then once that has run out I will start picking up the prescription. At some point in the future, maybe another 6 months to a year, we might try to taper off Nortriptyline and see how she does off of it. I will wait and see what Dr. Lawton's note has to offer regarding his most recent evaluation. I appreciate the opportunity to assist in this nice lady's care.

Dr. Andrew L. Lawton corresponded with Stacy Mathis, RN on

August 6, 2014:

Per your request, I saw Ms. Shirley Walker for a comprehensive examination on July 29, 2014. She had a history of a left inferior orbital blowout fracture. She stated that her vision in her left eye had been blurry for the past six to eight weeks. She reported light sensitivity, trouble reading, and squinting to see. 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. She has excess tearing which could indicate that she suffered damage to her nasal bone with resultant obstruction to tear drainage. I provided a sample of artificial tears to keep her eyes moist. She should wear her eyeglasses at all times. If her tearing persists, she should have an evaluation by an oculoplastics specialist to check for obstruction to tear drainage from her left eye. She will return to me as requested. Thank you for allowing me to participate in Ms. Walker's care and please feel free to contact my office if you have any questions.

The claimant continued to follow up with Dr. Baskin.

An x-ray of the claimant's facial bones was taken on October 12, 2015 with the impression, "Mild irregularity of the inferior orbital wall on the left in this patient status post left inferior orbital wall fracture. No displaced fracture fragments are seen. No abnormal opacification of the left maxillary sinus is identified."

Dr. Baskin noted on March 7, 2016, "Shirley is back in and still complains of some pain under her left eye and throbbing. She says she squints a lot and is going to the eye doctor to get her eyes checked. I saw her last and we did x-rays of the left orbit that showed a little slight irregularity of the inferior orbital rim consistent with an old healed fracture. Maxillary sinus was normal. Facial bones unremarkable." Dr. Baskin's impression was "Orbital fracture secondary to blunt trauma really resolved except for some residual pain. Still taking Nortriptyline 10 mg 3 at bedtime. I told her that she could continue taking that on an as needed basis. I will see her back on an as needed basis but she really doesn't need any follow up with me routinely."

Dr. Monica Dellimore informed Stacy Mathis, RN on December 23, 2016, "I saw Ms. Walker for an eye examination. She does have a history of the orbital fracture. She reports that her left eye has been watering and matting up in the morning. She is stating that her vision is getting worse....Ms. Walker appears to be suffering from dry eyes. I talked to her

about treatment including artificial tears and lubricating ointments. I would like for her to try that for the next few weeks and then return to the office to then be checked for glasses.”

Dr. Baskin informed the claimant in part on September 21, 2017, “You have the history of work-related injury with facial trauma and orbital fracture. This fracture has healed. There is nothing else for us to do about your problem except to use the medication on an as-needed basis.”

Dr. Baskin reported in part on October 25, 2017, “She does not have any objective findings of ongoing problems. I do not feel she needs to stay on medications long term....I would prefer that she be released from my care since she is at MMI and really does not require further treatment for the numbness which may well be permanent but is completely subjective under her left eye. I have explained to her that there is no permanent partial impairment rating for her injury.”

According to correspondence from the respondents’ attorney, the claimant received a Change of Physician from Dr. Baskin to Dr. John D. Pemberton on December 18, 2017. There is not a Change of Physician Order in the record before the Commission.

The record indicates that the claimant treated with Dr. John D. Pemberton, Jones Eye Institute, University of Arkansas for Medical Sciences, on January 11, 2018: “43 YO F here for eye exam secondary to

L orbital floor fracture that occurred in Jan 2013....Pt states that she is having some residual 'problems' like facial numbness OS, HAs, difficulty chewing on left side, and some dizziness. Pt states that she never had to wear glasses before she was attacked and punched in the face. Pt denies diplopia. Pt has constant HAs but is on Nortriptyline and this helps w/HAs." Dr. Pemberton diagnosed "Myopia of both eyes with astigmatism and presbyopia – Both Eyes. Chronic nonintractable headache, unspecified headache type. Hypesthesia – Left Eye." Dr. Pemberton commented, "New glasses Rx given today. Will make referral to Dr. Suen to evaluate the left hypesthesia, chronic pain since 2013 after suffering orbit fracture from an assault." Dr. Pemberton also planned "Ambulatory Referral to Neurology."

Dr. Dale Carter, UAMS Neurology Clinic, corresponded on February 21, 2019:

Per your letter I am writing to you regarding Shirley Walker. I have been treating her for posttraumatic headaches since she was assaulted by a patient in 2013. She did not have headaches until after this assault. She will continue to need neurologic followup to be sure her medications continue to provide relief for her headaches, or to adjust medications if needed. She would also benefit from a brain mri, neurocognitive testing for memory problems since the injury, and balance retraining. We have not been able to get this testing done thus far through her workmans comp insurance.

An MRI of the claimant's brain was taken on October 24, 2019 with the impression, "1. Negative pre and post contrast MRI examination head." A Family Nurse Practitioner informed the claimant on November 6, 2019, "Your MRI of the brain came back normal."

Dr. Carter noted on April 23, 2020, "Shirley Walker was contacted for a telephone encounter in place of their in person clinic visit due to concerns related to COVID 19. Headaches are 'a whole lot better!' They are still occurring daily but are [short] lived and her dizziness is also better. Pain localizes to the frontotemporal regions with light sensitivity, nausea and occasional left cheek numbness."

A pre-hearing order was filed on November 19, 2020. According to the text of the pre-hearing order, the claimant contended, "The claimant contends she continues to experience problems related to her compensable injury and that additional medical treatment is reasonably necessary for treatment of those problems. She also contends that she has received treatment in the past for which the respondents denied liability, and she contends that this treatment was reasonably necessary for treatment of her compensable injuries and the liability of the respondents. 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 injuries and, therefore, the respondents are liable for it. The

claimant specifically reserves any and all other issues for future litigation and/or determination.”

The parties stipulated, “The respondents accepted this claim as compensable and have paid all appropriate medical and indemnity benefits to date.” The respondents contended, “The respondents contend the claimant sustained an injury on January 7, 2013 and that she has received all the benefits to which she is entitled. Claimant came under the care of Dr. Reginald Rutherford who found she had obtained maximum medical improvement with a 0% impairment rating on June 17, 2013. After Dr. Rutherford passed away, Dr. Michael Chesser assumed care of the claimant until he left his practice, at which time Dr. Barry Baskin took over claimant’s care. Dr. Baskin released the claimant from his care on March 7, 2016, when claimant requested a follow up appointment with Dr. Baskin for continued headaches and facial nerve pain, Respondents authorized the claimant to see Dr. Baskins (sic) on December 12, 2016. Dr. Baskin advised the claimant at that time that she had infraorbital neuralgia that will most likely always exist and that there is nothing that can be done for this condition other than to continue on the Nortriptyline previously prescribed. The claimant advised Dr. Baskin at that time that she was having watering and matting of her left eye, for which he referred her to Dr. Dellimore. Respondents authorized an appointment with Dr. Dellimore, who diagnosed

the claimant with dry eye, unrelated to her compensable injury. Claimant requested and received a Change of Physician to Dr. Pemberton, who examined the claimant on January 11, 2018. Dr. Pemberton has referred the claimant to Dr. Suen 'to evaluate the left hyperesthesia, chronic pain since 2013.' Claimant has already had a thorough work-up and examinations by two neurologists, Dr. Reginald Rutherford and Dr. Michael Chesser, and a physiatrist, Dr. Barry Baskin, for her hyperesthesia. Further evaluation is not reasonable and necessary medical treatment in connection with her compensable injury as Dr. Baskins (sic) has already advised that continued Nortriptyline is the recommended treatment, Finally, Respondents contend that all medical treatment other from (sic) Dr. Pemberton is unauthorized and not reasonably necessary treatment. The respondents specifically reserve any and all other issues for future litigation and/or determination."

The parties agreed to litigate the following issues:

1. Whether additional medical treatment is reasonably necessary in connection with the January 7, 2013 compensable injury.
2. Fees for legal services.

A hearing was held on February 3, 2021. At that time, the claimant contended that she suffered from headaches which were causally related to the January 7, 2013 compensable injury. The claimant contended that she received a change of physician to Dr. Pemberton and that Dr. Pemberton

referred her to Dr. Carter. The claimant contended that treatment provided by Dr. Carter was reasonably necessary. The following colloquy took place:

MRS. MCKINNEY: First, with regard to the claimant's contention that Dr. Pemberton, the change of physician doctor, has referred her to Dr. Carter, who we were told is a headache specialist, we don't know anything about Dr. Carter. We don't have Dr. Carter's records, so I believe this is just Ms. Walker's characterization of what Dr. Carter does. For all we know, Dr. Carter is a physical medicine doctor, a neurologist....We don't know what Dr. Carter is. So with that, we object to just a blanket referral. Our contention is that Ms. Walker sustained the injury in 2013. My client has stood ready, willing, and able to provide all reasonable and necessary medical treatment....So it's our contention that we're providing the reasonable and necessary medical treatment and she's outside of that, so therefore it should not be authorized.

THE COURT: Okay. I understand.

MR. WHITE: Very quick response, Judge.

THE COURT: Sure.

MR. WHITE: We requested medical records – a blanket request – from UAMS. There were no records from Dr. Carter or the headache clinic included. There is a headache clinic at UAMS, and I believe Dr. Carter is the head of it. I don't have anything here today to present into evidence to corroborate that. We would request that you would be – that treatment would be authorized to the appropriate clinic at UAMS to treat headaches, which we could contend would be the headache clinic.

THE COURT: Okay. And so you did request records? I remember at one time we had talked about that.

MR WHITE: I'm sorry?

THE COURT: You say you did request records at one time?

MR. WHITE: We did request records, and we got a ream of records from UAMS, but we did not receive anything from the headache clinic or from Dr. Carter.

THE COURT: Okay. So even though you did get some records in response to your request for medical records, none of those records contained anything from the headache clinic

–

MR. WHITE: That's correct.

THE COURT: - and/or Dr. Carter.

MR. WHITE: Correct.

The claimant testified at the February 3, 2021 hearing:

Q. And the main reason we're here today is because you're complaining of headaches. Is that correct?

A. Yes.

Q. When did the headaches start?

A. It started maybe a month after, you know, when I was seeing Dr. Baskin because I kept telling him, and he was saying that he didn't specialize with headaches, you know, because I was letting him know that I was having headaches....

Q. Are you still having headaches?

A. Yes, I am. But Dr. Carter is – I don't have them, you know, because the medicine that – that she's giving me is working....

Q. Was there a point in time – and just – we don't have to go into a lot of detail on this, but you did ask the Workers' Compensation Commission for a change of physician. Is that correct?

A. Yes.

Q. And am I correct in saying that the Commission granted a change of physician to Dr. Pemberton?

A. Yes....

Q. Did he specifically refer you to Dr. Carter?

A. Yes....

Q. Did they schedule the appointment for you?

A. Yes.

Q. And that was Dr. Pemberton's office that scheduled the appointment?

A. Yes.

Q. Okay. Have you been seeing Dr. Carter?

A. Yes....

An administrative law judge filed an opinion on May 4, 2021. The administrative law judge found, among other things, that there was no evidence of a referral to Dr. Carter or treatment provided by Dr. Carter. The

administrative law judge 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 filed a timely notice of appeal to the Full Commission.

On September 14, 2021, the claimant filed a MOTION TO SUPPLEMENT THE RECORD. The claimant stated, among other things, “The records of Dr. John Pemberton, the 2nd opinion physician, were not made part of the record. I would like to submit these records and billings so that we can further proceed with this case....Dr. John Pemberton referred me to this physician, Dr. Cale Carter. I would like to make this a part of the record if I may.”

A majority of the Full Commission filed an ORDER on November 9, 2021. The Full Commission found that the evidence submitted by the claimant was admissible in accordance with *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007) and *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). We found, “The Full Commission therefore grants the claimant’s MOTION TO SUPPLEMENT THE RECORD....The record for the Full Commission’s *de novo* review shall include the evidence submitted at the hearing held February 3, 2021 in addition to the exhibit packet included by the claimant in her MOTION TO SUPPLEMENT THE RECORD.”

In an opinion filed December 17, 2021, the Full Commission denied a motion by the respondents to reconsider our opinion filed November 9, 2021. However, the Commission granted a motion by the respondents to cross-examine Dr. Carter. We ordered:

The Full Commission shall hold open the record for a period not to exceed sixty (60) days, during which time the respondents may depose Dr. Dale M. Carter, assistant professor of neurology, University of Arkansas for Medical Sciences. The respondents may then supplement the record with Dr. Carter's deposition. The record shall otherwise consist of the evidence submitted at the February 3, 2021 hearing as well as the exhibit packet included by the claimant in her MOTION TO SUPPLEMENT THE RECORD.

Thereafter the Clerk of the Commission shall establish a final briefing schedule, so that the Full Commission can properly carry out its statutory mandate in accordance with Ark. Code Ann. §11-9-704(c)(2)(Supp. 2021) *et seq.*

The respondents' attorney examined Dr. Carter in a deposition taken January 26, 2022:

Q. Could you tell us, as a neurologist at UAMS, did you come to treat Shirley Walker?

A. Yes, I did.

Q. And how did she get to you?

A. I would have to go back into the notes to check that. She was referred, but I don't remember exactly how.

Q. All right. Do you recall when you first saw Ms. Walker?

A. Yes. I saw her, let's see, I think it was January 18th of 2018....

Q. And what is it specifically that you were treating Ms. Walker for?

A. Her headaches.

Q. Her headaches. Doctor, what objective medical findings do you have to support the subjective complaints of headaches?

A. She has dizziness that goes with it.

Q. Okay.

A. She has –

Q. Is that subjective or objective?

A. It's a combination thing. When people have post-traumatic injury, like a blow to the head, they many times may develop post-traumatic headache. They often will have memory problems. They often will have imbalance. And even as late as, you know, this month when I saw her, she has nystagmus. When she – when you have her move her eyes quickly to the left, her – her left eye will jitter and she feels “ugh,” dizzy, like she's going to be – kind of lose her orientation in space. And if you have her try and walk heel-toe, she drifts to the left because that's the way she feels like she's losing her balance. And this has been consistent throughout a lot of different doctor's notes throughout the past few years. It hasn't changed....

Q. And your physical findings, what are they with regard to Ms. Walker?

A. She has loss of sensation in the left V2 distribution, which is the cheek area. She has nystagmus with fast pursuits to the left, which is an indication of – of a disturbance in the vestibular system, which can translate to imbalance. She is also unable to do a tandem walk because she drifts to the left....

Q. So if the claimant sustained a fracture to the orbital floor, that would be where the V2 distribution is. Is that correct?

A. Yes. Because the nerve comes out right kind of halfway below the eye....

Q. And in this report, I'm reading that she was complaining to you that she was feeling stressed in her current job. Do you recall talking to her about that?

A. Yes.

Q. And does she complain to you that as she was feeling stressed going to work, her headaches would – would appear or be more severe?

A. She said that the headaches would come on if she was stressed because of interactions with certain employees.

Q. And doctor, isn't it true that headaches coming on with stress can occur from people that just have regular headaches or migraines, not headache associated with post-traumatic trauma?

A. It can be both....

Q. But you can't state within a reasonable degree of medical certainty that all of the headaches are related to what happened back in 2013, can you?

A. I would have to know that she did not have a prior history of headaches to be able to make that comment....

Q. And other than the claimant stating she has headaches, do you have any objective evidence of headaches?

A. There's no test for that.

Q. All right. So you just have to rely upon her credibility in that regard?

A. That's right.

The case was submitted to the Full Commission on April 13, 2022.

II. ADJUDICATION

A. Change of Physician

An administrative law judge found, "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."

The Full Commission does not affirm this finding. The employer has the right to select the initial treating physician. Ark. Code Ann. §11-9-

514(a)(3)(A)(i)(Repl. 2012). However, an employee may request a one-time change of physician. Ark. Code Ann. §11-9-514(a)(2)(A), (a)(3)(A)(ii), (iii)(Repl. 2012). When a claimant seeks a change of physician, she must petition the Commission for approval. *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 270, 19 S.W.3d 36, 39 (2000). Treatment or services furnished or prescribed by any physician other than the ones selected according to the change-of-physician rules, except emergency treatment, shall be at the claimant's expense. Ark. Code Ann. §11-9-514(b)(Repl. 2012).

Where a claimant has exercised her absolute, statutory right to a one-time change of physician pursuant to Ark. Code Ann. §11-9-514(a)(3)(A)(ii), the respondents must pay for the initial visit to the new physician in order to fulfill their obligation to provide adequate medical services under the provisions of Ark. Code Ann. §11-9-508(a)(Repl. 2012), *infra*. Whether treatment is the result of a “referral” rather than a “change of physician” is a factual determination to be made by the Commission. *Department of Parks & Tourism v. Helms*, 60 Ark. App. 110, 959 S.W.2d 749 (1998), citing *Pennington v. Gene Cosby Floor & Carpet*, 51 Ark. App. 128, 911 S.W.2d 600 (1995).

In the present matter, the parties stipulated that the claimant sustained a compensable injury on January 7, 2013. The claimant signed a

Form AR-N, Employee's Notice Of Injury, on February 13, 2013. As the Full Commission has noted, correspondence from the respondents' attorney indicated that the claimant received a Change of Physician from Dr. Baskin to Dr. John D. Pemberton on December 18, 2017. Neither the administrative law judge nor the parties submitted the Change of Physician Order into the record before the Commission. However, the parties' Joint Exhibit shows that Dr. Pemberton examined the claimant at UAMS on January 11, 2018. Dr. Pemberton's treatment plan included, "Ambulatory Referral to Neurology." The Full Commission reiterates that we have admitted into the record the documents included in the claimant's "Motion to Supplement the Record," filed September 14, 2021. Said documents plainly show that Dr. Dale Carter, UAMS Neurology Clinic, began treating the claimant after Dr. Pemberton's "Ambulatory Referral to Neurology." Dr. Carter expressly testified at the deposition of record that the claimant "was referred" to her for treatment, although Dr. Carter did not recall the origin of the referral.

The Full Commission finds that Dr. Pemberton referred the claimant for treatment at the UAMS Neurology Clinic, where the claimant subsequently began treating with Dr. Carter. We do not affirm the administrative law judge's finding that treatment provided by Dr. Carter was "unauthorized." The Full Commission finds that the claimant treated with

Dr. Carter as the result of a valid referral from the change of physician doctor, Dr. Pemberton. *See Department of Parks & Tourism, supra.*

B. Medical Treatment

An administrative law judge found, “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.” The Full Commission does not affirm the administrative law judge’s finding.

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).

In the present matter, the parties stipulated that the claimant sustained a compensable injury to her face on January 7, 2013. The claimant testified that a client became angry and “He hit me real hard.” The medical evidence of record corroborated the claimant’s testimony. It was noted at Concentra Health Centers on January 9, 2013, “The patient suffered a direct blow [to the] orbital region on left. The pain began immediately.” A CT of the claimant’s facial bones on January 9, 2013 showed “Left orbital floor fracture.” Dr. May stated on March 15, 2013, “I discussed with her that the numbness she has over the left cheek can take up to a year to resolve and could potentially be permanent.”

Dr. Rutherford opined on June 17, 2013, “She is at maximum medical improvement.” Nevertheless, it is well-settled 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). The Full Commission finds in the present matter that medical treatment provided after June 17, 2013 was geared toward management of the claimant’s compensable injury. We note Dr. Chesser’s report on January 29, 2014 that the claimant continued to suffer from post-traumatic

headaches following the compensable injury, although the claimant's symptoms were improved through medication.

An x-ray of the claimant's facial bones on October 12, 2015 showed "Mild irregularity of the inferior orbital wall on the left in this patient *status post left inferior orbital wall fracture* [emphasis supplied]." Dr. Baskin stated in part on October 25, 2017, "She does not have any objective findings of ongoing problems....I would prefer that she be released from my care since she is at MMI and really does not require further treatment for the numbness which may well be permanent but is completely subjective under her left eye." The claimant thereafter received a Change of Physician from Dr. Baskin to Dr. Pemberton at UAMS. Dr. Pemberton examined the claimant on January 11, 2018 and referred the claimant to the UAMS Neurology Clinic. The claimant subsequently began treating with Dr. Dale Carter at the UAMS Neurology Clinic. The claimant filed a MOTION TO SUPPLEMENT THE RECORD on September 14, 2021, which motion a majority of the Full Commission granted on November 9, 2021. The Full Commission again reiterates that the documents attached with the claimant's MOTION TO SUPPLEMENT THE RECORD have been admitted into evidence pursuant to *Long and Bryant, supra*.

The evidence submitted by the claimant includes correspondence from Dr. Carter dated February 21, 2019. Dr. Carter stated in part, "I have

been treating her for posttraumatic headaches since she was assaulted by a patient in 2013. She did not have headaches until after this assault. She will continue to need neurologic followup to be sure her medications continue to provide relief for her headaches, or to adjust medications if needed.” It is within the Commission’s province to weigh all of the medical evidence and to 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. Carter’s opinion is corroborated by the record and is entitled to significant evidentiary weight. The respondents state on appeal, “The claimant is asking for treatment for her purely subjective complaints.” Yet it is well-settled that a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional benefits. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, citing *Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997). Dr. Carter testified at the deposition of record that she was treating the claimant for post-traumatic headaches. The Full Commission finds that the claimant’s post-traumatic headaches were causally related to the stipulated compensable injury which occurred on January 7, 2013.

After reviewing the entire record *de novo*, the Full Commission finds that the treatment of record provided by Dr. Carter was reasonably

necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We find that Dr. Pemberton referred the claimant to Dr. Carter, and that Dr. Carter’s treatment was not “unauthorized” pursuant to the change-of-physician rules. The reasonably necessary treatment of record provided by Dr. Carter shall be the responsibility of the respondents.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer concurs.

CONCURRING OPINION

I concur with the majority; however, as I said in my dissenting opinion on this issue of supplementing the record, I do not believe that we should have allowed Claimant to supplement the record because the evidence was not new, and Claimant was not diligent in discovering the evidence. *See, e.g., Get Rid of It Ark. & Chartis v. Graham*, 2016 Ark. App. 88, at 7.

CHRISTOPHER L. PALMER, Commissioner