

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE № H005904**

BARBARA GRANT, EMPLOYEE	CLAIMANT
BAPTIST HEALTH, SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS ADMINISTRATOR SERVICES, TPA	RESPONDENT

OPINION FILED 24 SEPTEMBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 26 June 2024 in Little Rock, Arkansas.

The Wren Law Firm, Mr. Daniel Wren, for the claimant.

Worley, Wood & Parrish, PA, Mr. Jarrod Parrish, for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 26 June 2024 in Little Rock, Arkansas. The parties participated in a pre-hearing telephone conference on 21 May 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit № 1, was entered on 22 May 2024.

The parties agreed to the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. The employee/employer/TPA relationship existed at all relevant times.
3. The claimant sustained a compensable work injury on 8 August 2020 that was accepted as compensable and has received some benefits, accordingly, on the claim.

The sole ISSUE TO BE LITIGATED was whether the claimant is entitled to additional medical treatment. Specifically, she claims that she is entitled to additional MRI imaging. All other potential issues have been reserved.

The parties' CONTENTIONS, as set forth in their Prehearing Questionnaire Responses, were incorporated into the Prehearing Order.

Per the claimant's CONTENTIONS, she exercised her right to a change of physician to Dr. Kenneth Rosenzweig, whom she saw on 11 December 2023. Dr. Rosenzweig requested an MRI of the pelvis with attention to the bilateral hips and the right sacroiliac (SI) joint. The respondents denied coverage for the same.

Per the respondents' CONTENTIONS, all appropriate benefits have been provided. The claimant was released with no restrictions and a 0% impairment rating. The respondents contend that additional treatment, specifically the MRI imaging, is not necessary or reasonable. Alternatively, they contend that the requested treatment is not related to her accepted work injury.

The claimant was the sole WITNESS testifying at the hearing. The EVIDENCE presented consisted of her testimony along with Commission's Exhibit No 1 (the 22 May 2024 Prehearing Order), Claimant's Exhibit No 1 (Dr. Rosenzweig's New Patient H&P note and request for additional imaging), and Respondents' Exhibit Nos 1 (54 pages of various medical records) and 2 (three pages of non-medical records).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing her demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that she is entitled to additional treatment in the form of additional MRI studies of her pelvis.

III. HEARING TESTIMONY & MEDICAL EVIDENCE

Claimant Barbara Grant

The claimant testified that she is currently working for the respondent-employer (Baptist) as a utilization review nurse. At the time of her August 2020 workplace accident, however, she was nursing in direct patient care. She testified that she injured herself when she slipped on the floor walking out of a patient room. The injury was reported, and treatment was provided. The claimant eventually underwent right hip surgery with Dr. James Tucker to repair a torn labrum.

She was later found to be at maximum medical improvement and released without any restrictions by Dr. Tucker. The claimant testified that returning to floor nursing was difficult, so Baptist accommodated her with a move to utilization review, which is a desk job. Discussing the ongoing difficulty she associates with her work injury, she stated, “continued back pain, mobility issues, pain issues.” [TR at 11.] She also testified that she experiences tremors, which “have been ongoing since the beginning... they come and go. Some days are worse, some days are better.” [TR at 12.]

On cross examination, the claimant stated that she has experienced shaking and tremors since her injury and throughout her treatment. She acknowledged that her utilization review position is a permanent job and that it pays more than her previous position with the Baptist. The claimant also acknowledged previous diagnostic studies:

Q: All right. Now, I'm going to review with you all the diagnostic studies that you've had in the claim. You had an MRI on your lumbar spine in August of 2020, MRI of your right hip in October 2020, an EMG study in March of '21, a right hip arthrogram in March of '21, an MRI of your right hip again in July of '21, a CT of your lumbar spine in October '21, an MRI of your thoracic and lumbar spine in December of '21, and another MRI of your low back in January of '22. Do you dispute that you've had all those diagnostic studies?

A: No, I do not.

Q: So that would be three MRIs and a CT on your low back, two MRIs and an arthrogram on your right hip and a MRI of your thoracic spine. Seven total diagnostic studies, right?

A: Yes.

Q: Okay. Three of them including your right hip, right?

A: Yes, sir.

Q: And what are you asking for here today?

A: Another MRI of my pelvis and bilateral hips.

Q: Okay. And when I look at Dr. Rosenzweig's report, he only references an MRI of the lumbar spine in March of '23 not the two hip MRIs or the hip arthrogram. Do you have any explanation for why he would not have discussed or documented those prior studies on the area he's recommending a study for?

A: No, other than the most recent imaging that I have is what I provided him with.

Q: Okay. You agree—

Judge: Is that to say he doesn't have access to the other studies and imaging reports?

A: I am not sure if he has access and they—he didn't ask me to bring that. He asked me to bring the most recent, which is what I took.

Q: Okay. You'll agree with me you did not take the disc or films from any of the diagnostic studies dealing with your right hip, the two MRIs or the arthrogram?

A: Yes.

Q: Okay. And you agree with me it would be important for Dr. Rosenzweig to know about all the other diagnostic studies if, in fact, he's going to recommend more diagnostic studies, right?

A: Yes.

[TR at 16-18.]

The claimant went on to testify that she also began having left hip pain after Dr. Tucker's release, but that she did not report that to Baptist. She acknowledged that Dr. Tucker was her authorized provider before exercising her change of physician to Dr. Rosenzweig, but that she also saw "Dr. Moore, Dr. Maggio, Dr. Brown, and docs at the Air Force Clinic" on her own in the meantime. [TR at 19.] The claimant testified that despite the details of her care with those other providers not appearing in Dr. Rosenzweig's notes, she did discuss the care they provided with him. She acknowledged that she'd been released from care by Drs. Cayme, Tucker, and Vargas; that she'd already undergone seven diagnostic studies; and that Dr. Rosenzweig's request for an MRI was "primarily driven" by her "subjective" complaints. [TR at 21.]

The respondents' counsel asked if she understood the purpose of a Functional Capacity Evaluation (FCE) and if she "knew it was important to be honest and to put forth

consistent effort.” [TR at 22.] The claimant answered in the affirmative. He asked if she felt unwell on the day of the evaluation or if she had “any issue with the evaluator and how they dealt with you.” *Id.* She denied feeling unwell or having any issues. The 17 September 2021 FCE returned a reliability score of 38 out of 55. The conversation around the reliability of her effort continued:

Q: So the one opportunity you have to show objectively what you can and can’t do and at a time when you knew you needed to give honest consistent effort, you produced a 38 out of 55 reliability score, right?

A: Yes, sir.

Q: And you, at your deposition, told me you had no explanation for that.

A: Well, I have an explanation, but I’m not going to state that here. I tried my hardest.

Q: You’ll agree with me that’s the only assessment we have of the reliability of your complaints?

A: Yes.

Q: As far as objective testing, right?

A: Yes.

Q: Okay.

Judge: Well, the reliability score, if that’s going to go toward your credibility in the general sense as to, you know, your condition and what you’re experiencing, if you have an explanation then, do you not? You just told me you had something you don’t want to tell us. I would be interested to hear.

A: I went—

Judge: I mean, you don’t have to. It’s your choice.

A: I went in there and I did everything that I could to the best of my ability and the guy was very nice. We had casual conversations, while I took breaks in between and I, honestly, feel like, because it’s a workers’ comp claim and they don’t want to deal with it, they give you a score that they want to give you. Because [Mr. Wren] had already told me in advance to go in there and do it, to make sure I tried with the best of my ability, which I did.

Judge: Okay.

Q: So ma’am, are you insinuating or indicating that the evaluator, who you told me you didn’t have any problems with, manufactured a 38 out of 55?

A: Yes.

[TR at 23-24.]

Claimant’s counsel objected to further questioning around the FCE and the claimant’s opinion on the validity of the testing as not being relevant. The objection was overruled, and the claimant went on to state that she did not complain about the FCE at

her deposition because she “was thinking more on personal terms,” and she did not dislike the evaluator. [TR at 28.] The claimant was unsure why she would be targeted for an untruthful evaluation report, saying, “I don’t know why I would be singled out. I do know that the injury that I have is complicated and a lot of people don’t understand it and it does sometimes appear that it’s not real, but it’s real.” [TR at 30.]

After some more back-and-forth, the claimant was asked:

Q: So, ma’am, my question before the objection was: If this evaluator, truly, was trying to sabotage you and set you up and close your claim out and get you out of here, why would he not give you a stinky score like 22 out of 55, 25 out of 55?

A: Because—

Mr. Wren: Your Honor, objection. It calls for speculation.

Judge: Yeah, the objection is noted. It does. It calls for—but it’s her opinion. It’s a speculative opinion. If you can answer the question, then do. If you don’t know, you don’t know.

A: If they’re gonna—they don’t want it to look bad, like they are faking it and putting stuff in there that’s false, they’re not going to make it super low.

[TR at 33-34.] The claimant went on to say that she was not pursuing any formal claims alleging fraudulent practices against the FCE evaluator. “I wouldn’t want to ruin somebody’s career over my feelings and my opinions, except of proof.” [TR at 36.]

Medical Evidence

On 27 March 2014, the claimant saw Dr. David Johnson who noted, “Barbara comes with chronic pain... She has seen Dr. Brad Thomas and Dr. Ricca for her back, but continues to have issues and has to take pain management.” [Resp. Ex. No 1 at 1.]

On 6 October 2014, Dr. Johnson also noted, “comes with right leg pain. She has had this for almost a month. It is burning and stinging mostly from the hip down to the heel.” He assessed Cervical Disc Degeneration, Pain in Limb, and Chronic Pain. An EMG and nerve conduction study was scheduled for her right leg. [*Id.* at 8.]

An MRI of the lumbar spine on 27 August 2020 revealed a “small disc protrusion at L5-S1... in close proximity to the traversing right S1 nerve root in the right paracentral space without definite mass effect or approximation.” [*Id.* at 9.]

An MRI scan of her right lower extremity was conducted on 30 October 2020, and no remarkable findings were reported.

Dr. Edward Saer saw the claimant on 2 November 2020 and reviewed her MRI findings. He assessed:

She is symptomatically the same. She says she is going to start physical therapy again tomorrow. The MRI of the hip is basically negative. There is no evidence of labral tear, no increased marrow signal or AVN, no joint effusion. I reassured her that her hip really is okay. Her symptoms are likely referred from the lumbar spine. At this point she has had good treatment and I think that she just needs to complete her therapy. Hopefully she will begin to improve soon.

[*Id.* at 13.]

A nerve conduction/EMG study was performed on 1 March 2021. The findings were within normal limits and Dr. Rodrigo Cayme’s impression was of a normal study. [*Id.* at 14.] He released the claimant without any restrictions.

A right hip arthrogram was then performed on 24 March 2021. Dr. Samuel Edwards found a “tear of the right acetabular labrum between the 1:00 and 10:00 positions.” [*Id.* at 18.]

On 13 April 2021, Dr. Cayme released the claimant to work without restrictions. [*Id.* at 19.]

Another MRI scan of the right hip was performed on 14 July 2021. The impression included, “Asymmetric deformity and truncation of the right labrum. This is seen anteriorly and laterally. This is consistent with labral tear without a known history of surgery. No history of surgery is provided.” [*Id.* at 20.] That report was modified later the same day to

note, "Patient does have a history of prior right labral repair. Findings are consistent with postoperative change." [*Id.* at 21.]

On 12 August 2021 Dr. Victor Vargas released the claimant to work without restrictions. [*Id.* at 22.]

The claimant presented for an FCE on 17 September 2021. That evaluation report stated:

The results of this evaluation indicate that an unreliable effort was put forth, with 38 of 55 consistency measures within expected limits... during formal AROM testing, she demonstrated that she was not able to flex her hip more than 75 degrees. However, during functional aspects of testing, she was observed repeatedly assuming a flex position of her hip greater than 90 degrees. She also failed to produce a significant cardiovascular response to physical testing that would indicate that a significant degree of effort was being put forth. Her gait was also not consistent throughout the evaluation. During the walking trials she exhibited bulking/jerking movements of her right hip, but during prolonged walking and at other points throughout the evaluation she was observed walking with a smooth uninhibited gait pattern. She also had pain reports that did not correlate with her movement patterns. Her frequent pain report level of 8 does not correlate with the description of this level of pain provided to her and she failed to exhibit outward compensatory movements.

...

She reports she did more PT and injections and then underwent surgery in May of 2021. She reports she has more PT after surgery and has had more MRIs which showed that her hip looks fine... She reports that her treatment has consisted of physical therapy and injections in her right hip... Ms. Grant describes her pain as being in her right hip. She reports additional areas of pain that include her low back which she does correlate to her work related injury.

[*Id.* at 23, 26.]

The claimant then returned to Dr. Tucker after the FCE, and he noted the following:

Barbara Grant presents back today for recheck. She continues to have buckling of the right thigh and hip with ambulation. We have been unable to find any anatomic source for this. The postoperative MRI has shown no signs of any pathology in the hip. We obtained a functional capacity exam to attempt to assign permanent work restrictions as she has now reached maximal medical improvement. However the effort and symptoms on the FCE were inconsistent and they could not give us a valid set of work restrictions. I discussed this with Ms. Grant today. There is really nothing more that I can find to improve her hip or function. I will not be able to

assign permanent work restrictions secondary to the FCE. There is no permanent partial impairment based on the AMA guide to permanent partial impairment ratings volume 4. Therefore we are releasing her to return to work without restrictions and without an impairment rating. She was instructed to follow-up as needed if she had any change in symptoms or new occurrence of injury.

[*Id.* at 45.] Dr. Tucker also entered a Return to Work note that stated, “She has reached MMI and may return to work full duty. No impairment rating assigned.” [*Id.* at 46.]

On 15 October 2021, the claimant presented to an emergency department with complaints of back pain. That note states that she reported a recent return to work after a lumbar injury and that she awoke that morning with her back spasming. Mild degenerative changes were noted on a CT scan of her lower lumbar spine. She was diagnosed with degenerative lumbar disc disease and lumbar muscle pain. She was prescribed Valium for muscle spasms, topical Lidocaine patches, and a steroid dosepak. [*Id.* at 49-50.]

The claimant presented for a thoracic spine MRI on 7 December 2021. Her history noted, “Low back pain radiating to the right hip. Patient states that her hip and upper right thigh are sensitive to touch. Patient reports the pain is now radiating to the back and a little below her bra line.” The conclusions from that scan were:

C-shaped curvature of the lumbar spine with main convexity to the right side.

A broad-based disc bulge most pronounced in the central position as the C5-6 level seen on scout imaging with suggestion of partial effacement of the ventral cord.

Small left paracentral protrusion at T7-8.

Retrolisthesis, shallow broad-based disc bulge with superimposed central protrusion, posterior annular tear and moderate facet hypertrophy at the L5-S1 level contributing to mild exiting neural foraminal stenosis and no nerve root compression.

[*Id.* at 52-53.]

The claimant saw Dr. Rosenzweig as an authorized provider, after a change of physician, on 11 December 2023. The note from her examination by Dr. Rosenzweig includes:

She has ongoing groin pain, burning pain, back pain and hip pain. She is under contract with pain management at Arkansas Spine and Pain. She receives currently hydrocodone and had been on oxycodone. She had a variety of injections. She had an FCE which revealed inconsistent effort and non-reliable evaluation and was discharged from Dr. Jimmy Tucker's care. The last MRI of the lumbar spine was on 03/24/2023, which revealed degenerative disc changes at 5-1 with a broad-based protrusion at 5-1, mild facet arthropathy 3-4 through 5-1. No evidence of stenosis. She had a visit recently with Dr. Phillips who felt that she might be myelopathic and recommended MRI of the thoracic spine. This was based on hyperreflexia.

...

Previous surgery hip arthroscopy with a labral repair. Although not reported in this note, she has had a prior intervention with the SI joint injection, lateral femoral cutaneous nerve injection for meralgia parasthetica.

...

Pain drawing reveals pain across the low back over the right greater trochanter area over the anterior superior iliac spine, mid back and left flank pain.

...

Pain score is 8...she began shaking and quivering in her right leg with her examination...the quivering in her leg with examination appears to be pain induced but somewhat unusual finding that did not follow a specific nerve or muscle group.

IMPRESSION: Chronic back and right hip pain status post arthroscopic labral repair.

PLAIN/RECOMMENDATIONS: Deferred for further assessment of an MRI pending per Dr. Phillips and review medical records. Consider updating MRI of her pelvis. Check the status of her hip. She states her left hip was hurting and is why I would like to have this included on MRI. I do not have a clear answer for her source of chronic pain. I did review her MRI of the lumbar spine which appeared to be relatively benign. The hip and pelvis MRI would be helpful to assess her iliopsoas tendon and the status of her labral repair.

[Cl. Ex. No 1.]

IV. ADJUDICATION

The stipulated facts are outlined above and accepted as fact. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their

demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE IS ENTITLED TO ADDITIONAL MEDICAL BENEFITS.

An employer is required to provide treatment that may be reasonably necessary in connection with a compensable injury. ACA § 11-9-508(a). Reasonable and necessary medical services may include those necessary to diagnose a compensable injury, to reduce or alleviate symptoms, to maintain healing, or to prevent further deterioration of damage. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995). 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). In so doing, she must also establish that the treatment is causally related to her work injury. *Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 WL 5592602. What constitutes reasonably necessary treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

I do not find that the claimant has proved by a preponderance of the evidence that another MRI scan of her hip is reasonably necessary. The claimant was released by Dr. Tucker in September of 2021 and then eventually saw Dr. Rosenzweig through a change of physician in December of 2023. The history she provided for her 2021 FCE noted that since surgery, she "has had more MRIs which showed that her hip looks fine." Dr. Tucker's note upon her release stated that "the postoperative MRI has shown no signs of any pathology in the hip."

She even acknowledged in her testimony that it is “important for Dr. Rosenzweig to know about all the other diagnostic studies if, in fact, he’s going to recommend more diagnostic studies.”

Yet, she testified that she did not provide Dr. Rosenzweig with any discs or reports from past studies, except for a 2023 lumbar spine MRI, which she explained as, “He asked me to bring the most recent, which is what I took.” Additionally, she testified that she had been seen by several other providers, between Drs. Tucker and Rosenzweig, who are not noted in Dr. Rosenzweig’s record. Dr. Rosenzweig’s note indicates that a “hip and pelvis MRI would be helpful to assess her iliopsoas tendon and the status of her labral repair.” Dr. Tucker’s discharge note, however, comments exactly that an MRI has already shown no postoperative pathology.

Absent evidence that Dr. Rosenzweig’s recommendation was based on a review of the relevant past imaging (imaging that the claimant acknowledged would be important for his review) and that he either discounted the findings therein or that he had reason to believe that new symptomology required new imaging, I do not find that the claimant is entitled to additional medical benefits in the form of additional MRI scans. In the absence of the same, I am unable to credit Dr. Rosenzweig’s opinion as one that is fully informed. See *Poulan Weed Easter v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002) (the Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value). Accordingly, the claimant has failed to meet her burden of proof on her claim for additional medical benefits.

I should note that this finding does not turn on the lengthy back-and-forth in the record (and my rulings on the objections) around the claimant’s suspicions and accusations related to the FCE or the evaluator. She opened the door to the respondents’ questions about the veracity of the testing itself, and I find her speculative opinions relevant with

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regard to her discounting of the merit of the FCE report. And while I do find her accusations to be without merit and find her credibility to be lacking with regard to her actual efforts on the exam, I do not find her credibility on the nature of her ongoing complaints to be at issue in the question before me— whether additional imaging is reasonable and necessary in light of her admission that she did not provide all of the relevant studies to Dr. Rosenzweig.

V. ORDER

Consistent with the Findings of Fact and Conclusions of Law stated above, this claim for additional benefits is denied and dismissed.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE