IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE

THELMA E. SEIBER, Plaintiff/Appellee v. METHODIST MEDICAL CENTER OF OAK RIDGE, Defendant/Appellant	)	ANDERSON CIRCUIT NO. 03S01-9801-CV-00006 HON. JAMES B. SCOTT, JR., JUDGE

For the Appellant:

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MEMORANDUM OPINION

Members of Panel:
Justice Adolpho A. Birch, Jr.
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED IN PART;
REVERSED IN PART;
AND REMANDED. INMAN, Senior Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with

Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

FACTS:

Thelma Seiber (plaintiff), sustained a compensable work-related low back injury on March 28, 1996. She was treated by Dr. Ann Carter, a physician who was authorized by the employer. Dr. Carter referred plaintiff to Dr. Eugenio Vargas, also an authorized physician, who performed two surgeries and sent her back to Dr. Carter for follow-up care.

On July 2, 1997, the Court approved the parties' settlement of plaintiff's claim which, among other benefits, provided for continuing medical care by authorized physicians.

On July 23, 1997, the employer informed plaintiff's counsel by letter, as pertinent:

> ". . . As you are aware, Dr. Carter was Mrs. Seiber's family physician even before she sustained an injury at the hospital and Dr. Carter was permitted to continue as the authorized primary care physician in this matter. Mrs. Seiber also continues to see Dr. Carter for her other health problems, and sometimes it is difficult to know exactly what treatment is related to the injury of March 27, 1996, and her other physical and psychological problems.
>
> For the above reasons, as well as other reasons of which you are aware,[1] I am hereby notifying you on behalf of Methodist Medical Center that Dr. Carter will no longer be recognized as the authorized treating physician for any future medical treatment necessitated by Mrs. Seiber's injury of March 27, 1996. Since the hospital is still responsible for future medical treatment necessitated by her injury, I am giving you the following primary care physicians from which to choose for further medical treatment necessary . . ."

Plaintiff's first post-settlement doctor's appointment was scheduled for August 29, 1997. On August 18, 1997, the employer's representative telephoned the employee, told her that Dr. Carter was no longer an authorized

[1]At oral argument, the employer alluded to another reason for changing physicians but that there were no facts in the record about that reason.

physician for her care, and provided a list of authorized doctors from which to choose. Notwithstanding this notification, plaintiff went to her previously scheduled appointment with Dr. Carter and continued under her care.

___ Plaintiff filed a motion to compel the employer to pay for Dr. Carter's continuing medical care, along with the affidavits of herself, Dr. Carter, and her attorney.

Plaintiff's affidavit indicated that she was "extremely comfortable with Dr. Carter as my physician and [I] desire to continue seeing her for management and monitoring of my back injury."

Dr. Carter's affidavit indicated that she was "willing to cooperate with Mrs. Seiber's former employer, Methodist Medical Center of Oak Ridge, in providing reports of my office visits and treatment of Mrs. Seiber to the extent necessary to comply with Methodist Medical Center of Oak Ridge's workers' compensation program."

Plaintiff's attorney's affidavit described his services in filing the motion and sought attorney's fees of $662.50 pursuant to T.C.A. § 50-6-204(b)(2). A supplemental motion for attorney's fees was filed on April 29, 1998, itemizing services rendered from December 2, 1997 through April 15, 1998, and requesting an additional award of $1,287.50 for a total of $1,950.00.

The plaintiff's original motion was argued on November 14, 1997, and the trial court held that before the employer can require an employee to change a previously approved physician, the burden of proving the reasons for the change should be upon the employer.

The court declined to allow the employer to "de-authorize" Dr. Carter as the treating physician because the record contained "no evidence justifying the termination," but declined to award attorney's fees because "the issue [was] a unique issue undecided by the cases presented."

THE ISSUES ON APPEAL:

The employer appeals and raises the issues of (1) whether the employer may de-authorize a previously authorized physician and furnish a three panel list of physicians from which the employee may choose for further treatment; and (2) who has the burden of proving the need or lack thereof for further medical treatment post-judgment or post-approval of a settlement agreement, the employer, or the employee?

The employee presents the issue of whether the trial court erred in denying her motion for attorney's fees pursuant to T.C.A. § 50-6-204(b)(2).

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995). We review questions of law *de novo* with no presumption of correctness. *Perry v. Sentry Ins. Co.*, 938 S.W.2d 404 (Tenn. 1996).

DE-AUTHORIZATION OF APPROVED PHYSICIAN

The trial court recognized that the employer may have valid reasons for disrupting or terminating the treatment of an employee which had been previously approved, but held that before the employer can require an employee to change a previously approved physician, the burden of proving the reasons for same should be on the employer. Finding no evidence to justify such termination in this case, the court declined to allow it even though a new list of physicians had been provided by the employer.

The employer argues that general workers' compensation law and the Tennessee Department of Labor's Case Management Rules and Utilization Review Rules, adopted pursuant to T.C.A. § 50-6-123 (1992), provide for employer management of treatment, including the right to de-authorize a

previously authorized physician, regardless of the employer's reason for doing so.[2]

Generally, the workers' compensation law should be construed liberally in favor of injured workers and in furtherance of the sound public policy that spawned the legislation to begin with, so as to secure for the beneficiaries of the law every protection that a liberal construction would authorize. *McClain v. Henry I. Seigel Co.*, 834 S.W.2d 295, 296 (Tenn. 1992).

The Case Management and Utilization Review Rules were created in accordance with the legislative intent as described in T.C.A. § 50-6-122(a)(1):

> It is the intent of the general assembly that quality medical care services shall be available to injured and disabled employees. It is also the legislative intent to control increasing medical costs in workers' compensation matters by establishing cost control mechanisms to ensure cost-effective delivery of medical care services by employing a program of medical case management and a program to review the utilization and quality of medical care services.

T.C.A. § 50-6-123 directs the Commissioner of Labor and employers to establish a Case Management System which will:

> (1) Develop a treatment plan to provide appropriate medical care services to an injured or disabled employee;
>
> (2) Systematically monitor the treatment rendered and the medical progress of the injured or disabled employee;
>
> (3) Assess whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;
>
> (4) Ensure that the injured or disabled employee is following the prescribed medical care plan; and
>
> (5) Formulate a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.

T.C.A. § 50-6-123(b)(1)-(5) [1996].

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[2]When asked by the Appeals Panel during oral argument, the employer asserted that, under the 1992 Case Management Rules, it had the right to move an employee "from doctor to doctor at will."

The Case Management System Rules require the employer to provide case management and directs certain functions which must be provided by the Commissioner of Labor "when an employee, employer, or health care provider seeks review of a decision or action by the employer's case manager." Rule 0800-2-7-.02(1)(b), (2)(a).

The Utilization Review Rules require the employer to provide a system of utilization review of workers' compensation cases and direct certain functions which must be provided by the Commissioner of Labor:

> (a) a review of an individual case when an employee, employer, or health care provider seeks an appeal;
>
> (b) review of utilization review services provided by other utilization review agents or firms for workers' compensation cases;
>
> (c) identification of providers who may have rendered excessive or inappropriate services to the commissioner for appropriate action; and
>
> (d) development of reports and summaries of utilization of medical care and services in workers' compensation cases in Tennessee or any political subdivision of the state.

Utilization Review Rule 0800-2-6-.02(2)(2)(a-d).

Nowhere do the Case Management Rules or the Utilization Review Rules require a trial court to uphold the de-authorization by an employer of a previously authorized physician. Moreover, there is no evidence in this record which would indicate any medical treatment was provided by Dr. Carter which was inappropriate, excessive, or not cost-effective.

The de-authorization of previously authorized medical care was addressed by this court in *Carter v. Shoney's, Inc.*, 845 S.W.2d 740 (Tenn. 1992), which held that "[i]n the absence of evidence directed specifically to the issue, we cannot arbitrarily order that . . . treatment be terminated." Nothing in the Case Management or Utilization Review Rules renders that holding obsolete. *See also, Lambert v. Famous Hospitality, Inc.*, 947 S.W.2d 852, 854 (Tenn. 1997),

requiring an employee to change doctors after lengthy and intensive treatment by the employee's physician would place an unnecessary burden upon the employee.

We find no authority for the appellant's contention that an employer may de-authorize an employee's previously authorized physician without just cause, and we affirm the trial court's holding on this issue.

BURDEN OF PROVING NEED FOR MEDICAL CARE:

Appellant argues that in post-judgment proceedings concerning medical treatment, the employee has the burden of establishing the necessity and reasonableness of charges incurred for treatment by health care providers "not designated or otherwise approved by the employer," citing *Lindsey v. Strohs Companies, Inc.*, 830 S.W.2d 899, 903 (Tenn. 1992).

Appellee agrees that *Lindsey, supra,* controls the issue, but argues the trial court correctly held that the employer must prove the need to change a previously authorized physician.

This court in *Lindsey* held that "the employee should not bear the burden of establishing the necessity of medical treatment or the reasonableness of medical charges when the employer has designated the physician or the employer's designate refers the claimant to other specialists." *Lindsey* at 903. Further, we held in *Russell v. Genesco*, 651 S.W.2d 206 (Tenn. 1983), that there is a presumption that treatment furnished by designated physicians is necessary and reasonable. There is no proof in this record to contradict the presumption, and we therefore affirm the trial court's holding that, in the case of a previously authorized physician, the employer had the burden of providing such proof, which it has failed to do.

ATTORNEY'S FEES

The employee/appellee argues that the trial court erred in refusing to award attorney's fees for the filing of her motion for post-judgment medical care and expenses. The employer/appellant argues that the trial court's denial of such fees was within the reasonable exercise of its discretion and should not be disturbed, and that attorney fees are not recoverable for any expenses of this appeal.

When a covered employee suffers an injury by accident arising out of and in the course of his employment, his employer is required to provide, free of charge to the injured employee, all medical and hospital care which is reasonably necessary on account of the injury. Such care includes medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members and other apparatus, nursing services ordered by the attending physician, dental care, and hospitalization. The only limitation as to the amount of the employer's liability for such care is such charges as prevail for similar treatment in the community where the injured employee resides. T.C.A. § 506-204. In *Goodman v. Oliver Springs Mining Co., Inc.,* 595 S.W.2d 805 (Tenn. 1980), a well reasoned opinion, the Supreme Court held that an employee who was under the continuing care of an approved treating physician is entitled to remain under the continuing care of such treating physician in the absence of a showing by the employer that such physician was rendering excessive or inappropriate services. It appears that such has been the rule in Tennessee at least since 1980. Efforts by employers and their insurers to escape liability for medical benefits by requiring injured employees to change doctors are not unique at all.

T.C.A. § 50-6-203(b)(2) permits, in addition to the fees allowed by § 50-6-226(a)(1), reasonable attorney fees incurred for enforcing the requirements of § 50-6-204 and *Goodman,* as well as "reasonable costs to include reasonable and

necessary court reporter expenses and expert witness fees for depositions and trial."

To require the injured worker to pay his or her own attorney fees incurred in such a case as this would place an undue hardship on the injured worker and defeat the purposes of the Workers' Compensation Law. Accordingly, we reverse the trial court's denial of attorney's fees and remand the case for an award of all attorney fees which the trial court finds were reasonably necessary to compel the employer to provide the medical care required by law, including reasonable fees for this appeal.

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William H. Inman, Senior Judge

CONCUR:

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Joe C. Loser, Jr., Special Judge

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Adolpho A. Birch, Jr., Justice

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FILED

March 25, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

THELMA E. SEIBER, Plaintiff-Appellee, v. METHODIST MEDICAL CENTER OF OAK RIDGE Defendant/Appellant .	)	ANDERSON CIRCUIT No. 97LA0099 No. 03S01-9801-CV -00006 Hon. James B. Scott, Jr. Judge

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the defendant, Methodist Medical Center of Oak Ridge and Robert W. Knolton, surety,for which execution may issue if necessary.

03/25/99