

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Sara Ellis,
Employee/Claimant,

OJCC Case No. 14-020976RLD

vs.

Accident date: 11/1/2012

Florida Institute of Technology/PMA
Insurance Company, and York Risk
Services Group,
Employer/Carrier/Servicing Agent.

Judge: Robert L. Dietz

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FINAL COMPENSATION ORDER

This cause was heard before the undersigned in Sebastian, Indian River County, Florida on May 18, 2015, upon the Claimant's claims for authorization of hip MRI and Vax-D per Dr. Weiss; penalties, interest, costs and attorney's fees. The Petition for Benefits was filed on September 11, 2014 (Docket Number (DN) 1). Mediation occurred on December 5, 2014, and the parties' pretrial compliance questionnaire was filed on December 30, 2014 (DN 18). The Claimant filed a Trial Memorandum on May 13, 2015 (DN 48). The Employer/Carrier filed a Trial Memorandum on May 12, 2015 (DN 44). Ronson J. Petree, Esq. was present on behalf of the Claimant. Gregory D. White, Esq. was present on behalf of the Employer/Carrier.

The defenses were the major contributing cause of the Claimant's condition and need for treatment is unrelated to her employment; requested care is not medically necessary and causally related to the industrial accident; industrial accident is not the major contributing cause of the Claimant's condition and need for treatment; no penalties, interest, costs and attorney's fees due and owing, and Employer/Carrier costs from Claimant.

The following documentary items were received into evidence:

Judge Exhibits:

Exhibit #1: All documents required under Fla.R.App.P. 9.180.

Exhibit #2: Order Approving Uniform Pretrial Stipulation and Pretrial Compliance Questionnaire dated December 30, 2014 (DN 19)

Exhibit #3: Final Evidentiary Order dated January 23, 2015 (DN 24)

Exhibit #4: Order Appointing an Expert Medical Advisor dated February 9, 2015 (DN 28)

Exhibit #5: Letter to Dr. Rojas-Expert Medical Advisor dated February 18, 2015 (DN 31)

Exhibit #6: Expert Medical Advisor Report from Dr. Rojas filed on March 24, 2015 (DN 34)

Joint Exhibits:

Exhibit #1: Mediation Conference Report filed on December 5, 2014 (DN 13)

Exhibit #2: Uniform Pretrial Stipulation and Pretrial Compliance Questionnaire filed on December 30, 2014 (DN 18)

Claimant's Exhibits:

Exhibit #1: Petition for Benefits #1 filed on September 1, 2014 (DN 1)

Exhibit #2: Response to Motion for Expert Medical Advisor filed on December 23, 2014 (DN 16)

Exhibit #3: Medical/Exempt Records attachment to Petition For Benefits #1 filed on January 15, 2015 (DN 22)

Exhibit #4: Response to Order Selecting EMA filed on February 12, 2015 (DN 29)

Employer/Carrier's Exhibits:

Exhibit #1: Response to Petition for Benefits filed on December 17, 2014 (DN 14)

Exhibit #2: Motion to Appoint Expert Medical Advisor filed on December 19, 2014 (DN 15)

Exhibit #3: Response to E/C's Reply to Claimant's Response to Motion to Appoint EMA filed on December 30, 2014 (DN 17)

Exhibit #4: Letter to JCC re: EMA questions/composite filed on February 13, 2015 (DN 30)

Exhibit #5: Amended Pretrial Stipulation filed on March 26, 2015 (DN 35)

Exhibit #6: JCC letter to EMA dated February 18, 2015 (DN 40)

Exhibit #7: Claimant's Deposition filed on May 12, 2015 (DN 42)

Exhibit #8: Deposition of Dr. Benjamin filed on May 12, 2015 (DN 43)

At the hearing, Sara Ellis, the Claimant, appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witness's testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The items to which the parties were in agreement on the pretrial stipulation sheet are accepted and adopted as findings of fact.
2. The parties stipulated that the Claimant suffered an industrial accident arising out of and in the course and scope of her employment on November 1, 2012, and suffered injuries to her back.
3. The Claimant is a 26 year old woman who was working as a dining room

attendant at breakfast and lunch and who swept, picked-up, restocked, and prepped, as needed. On November 1, 2012, she was in the crowded dairy refrigerator when she twisted to lift a case of milk to put on a cart behind her. She felt a “crunch” in her back. It alarmed her, but she kept working and reported it to her supervisor. After finishing, she went home to rest.

4. She did not immediately receive any medical treatment. She was first seen at For Care Medical by Dr. Bixton. She was referred to Dr. Weiss one month later. She had tightness, soreness, and pain the back, along with a lack of energy. She was referred for eight (8) weeks of physical therapy.” She returned to work and began sitting and cashiering.

5. The Claimant saw Dr. Johnnie Benjamin, the Employer/Carrier’s IME, who checked her reflexes and examined her back but was unable to offer any help.

6. Dr. Gary Weiss recommended Vax-D and an MRI of the hip that he thought would be helpful. Based on the conflict between Dr. Weiss and Dr. Benjamin, the Employer/Carrier filed a Motion to Appoint Expert Medical Advisor (DN 15). Dr. Joseph Rojas was appointed EMA (DN 28) and asked to respond to the questions of whether Vax-D and the hip MRI were medically reasonable and necessary. He reviewed the MRI, and was in-and-out of her room “very quick.”

7. Dr. Rojas saw the Claimant on March 16, 2015, and his report was filed on March 24, 2015 (DN 34). He did not feel that Vax-D was supported by “adequate scientific evidence” and addressed lumbar issues, and not sacroiliac joint dysfunction, which he believes is Ms. Ellis’ problem. He also opined that the hip MRI was not medically necessary because the hip MRI does not address the S1 issue.

8. Section 440.13(9)(c), Fla. Stat. (2008), mandates that the JCC appoint an EMA when there is disagreement in the opinions of the health care providers. See Palm Springs Gen. Hosp. v. Cabrera, 698 So.2d 1352, 1356 (Fla. 1st DCA 1997). The opinion of an EMA is pre-

sumed to be correct unless there is clear and convincing evidence to the contrary as determined by the JCC. See Section 440.13(9)(c), Fla. Stat. (2004); see also Mobile Med. Indus. v. Quinn, 985 So.2d 33, 36 (Fla. 1st DCA 2008) (stating EMA's opinion is presumptively correct unless JCC finds and articulates clear and convincing evidence to the contrary). The EMA's opinion has "nearly conclusive effect." Amos v. Gartner, Inc., 17 So.3d 829, 831-2 (Fla. 1st DCA 2009) (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998)).

9. I find no reason to overturn the decision of the EMA that the Vax-D and the hip MRI are not medically necessary to treat a lumbar condition. Dr. Rojas's reasons for these opinions are somewhat surprising in light of the other medical testimony in this case: he opines that the Claimant's medical condition is sacroiliac joint dysfunction (and not a lumbar condition) and that a CT-Scan would be best suited as a diagnostic tool to determine the Claimant's condition. This is an issue for another day.

10. Any and all issues raised by way of the Petition for Benefits, but which issues were not dismissed or tried at the hearing, or which were ripe, due and owing but not raised at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant, and therefore, are denied and dismissed with prejudice. Notwithstanding the foregoing, the parties stipulated a Petition for Benefits had been filed on May 12, 2015, and it had not been mediated thus it is not ripe for adjudication at this time. Jurisdiction is reserved as to the claims set forth therein.

11. Since the claim for Vax-D and the hip MRI are denied, the claim for attorney fees and costs is denied.

It is ORDERED and ADJUDGED that:

- 1) The claim for Vax-D is denied.
- 2) The claim for a hip MRI is denied.

3) The claim for attorney fees and costs is denied.

DONE AND ORDERED this 21st day of May, 2015, in Sebastian, Indian River County, Florida.



Robert L. Dietz
Judge of Compensation Claims
Sebastian/Melbourne District Office
1627 US-1, Suite 115
Sebastian, Florida 32958
(772)581-6800

COPIES FURNISHED:

PMA Insurance Company
PMA-FLOJCC@PMAGROUP.COM

York Risk Services Group
York.FLWC.legal@yorkrsg.com

Ronson J. Petree, Esquire
rpetree@forthepeople.com, NMays@forthepeople.com

Gregory D. White, Esquire
GWhite@hrmcw.com, AWinston@hrmcw.com