

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT**

Erin Segady

OJCC#.: 06-021842TMB

Claimant,

D/A: 10/09/01

v.

JUDGE TIMOTHY M. BASQUILL

JFK Hospital and Broadspire

Employer/Servicing Agent

FINAL MERIT ORDER

AFTER DUE NOTICE, a Merits Hearing was conducted before the undersigned Judge of Compensation Claims on December 21, 2010. The Claimant, Erin Segady was represented by Harvey Kaufman, Esquire. The Employer/Servicing Agent (hereinafter E/SA) were represented by Sandra Wilkerson, Esquire.

PRELIMINARY MATTERS

This case was previously set for a Merits Hearing on October 25, 2010, however, the hearing was continued so that Mediation could be completed with reference to a Petition for Benefits filed September 30, 2010. A Mediation subsequently occurred on November 20, 2010 at which time the parties reached an impasse.

The parties entered into a pre-trial stipulation on October 21, 2010 and there were subsequent amendments including an amendment filed by the E/SA on October 25, 2010.

CLAIMS AND DEFENSES

A. CLAIMS:

1. Authorization of Dr. Mate;

2. Authorization of Physical Therapy per Dr. Mate (rx dated 2/11/10);
3. Payment of bills from Comprehensive Health (Dr. Blumenfeld) covering 4/21/10 to 5/22/10;
4. Continuing care from Dr. Blumenfeld;
5. Continuing care from a neurologist or pain management doctor;
6. Costs, and
7. Attorney's fees payable by the E/SA.

B. DEFENSES:

1. The Claimant's injuries were due to a subsequent intervening motor vehicle accident (MVA) including but not limited to an October 3, 2005 MVA;
2. The Employer/Servicing Agent is entitled to apportionment due to the subsequent accident;
3. There was no referral by an authorized treating physician for chiropractic therapy;
4. There was no referral by an authorized treating physician for physical therapy;
5. Chiropractic care is not reasonable nor medically necessary nor causally related to the industrial accident;
6. Physical therapy is not reasonable nor medically necessary nor causally related to the industrial accident;
7. Although the accident or occupational disease was accepted as compensable: the E/SA subsequently denies based on major contributing cause defense and medical necessity;

8. The cervical strain to the Claimant's neck was initially accepted as compensable but subsequently denied based on major contributing cause and medical necessity, and
9. There is no entitlement to penalties, interest, costs and attorney's fees.

STIPULATIONS

The parties stipulated to the following:

- A. The undersigned Judge of Compensation Claims has jurisdiction over the parties and the subject matter.
- B. Venue is proper in West Palm Beach, Florida.
- C. The date of the accident is October 9, 2001.
- D. The Claimant gave timely notice of the accident to the employer.
- E. At the time of the accident on October 9, 2001, an Employer and Employee relationship existed between JFK Hospital and Erin Segady.
- F. That on October 9, 2001, workers' compensation coverage was in effect for JFK Hospital.
- G. The accident was accepted as compensable.

DOCUMENTARY EVIDENCE

The following documentary matters were admitted into evidence by the undersigned:

1. Pretrial stipulation and order dated December 21, 2010, with amendments and objections.

The following documentary matters, offered jointly, were admitted into evidence:

1. Deposition of Victor Albury, dated August 26, 2010.

The following documentary matters, offered by the Claimant, were admitted into evidence:

1. Petition for benefits with cover letter, dated June 17, 2010;
2. Deposition of Dr. Fred Blumenfeld, dated October 5, 2010;
3. Petition for benefits, filed July 26, 2006;
4. Petition for benefits, filed December 19, 2007;
5. Copy of letter, dated April 11, 2007;
6. Deposition of Margie Narine, dated July 27, 2010;
7. Copy of medical records of Dr. Russell Wilson;
8. Composite of medical records of Drs. Lambe, Gomez, and Wilson;
9. Copy of letter, dated December 16, 2009;
10. Copy of Notice of Intent to Serve Subpoenas, dated October 18, 2006;
11. Petition for benefits, filed September 30, 2010, and
12. Deposition of Dr. Gordon Green, dated December 20, 2010.

The following documentary matters, offered buy the E/SA, were admitted into evidence:

1. Deposition of Dr. Laszlo Mate, dated July 29, 2010;
2. Deposition of Dr. Laszlo Mate, dated December 7, 2010;
3. Deposition of Lisa Moline, dated October 4, 2010, (fact only);
4. Copy of medical record of Dr. Jack Goldberg, and
5. Composite of responses to petition for benefits and notice of denial.

At the hearing the Claimant also sought to admit certain correspondence and medical reports. E/SA objected to same based on relevancy, authenticity, and hearsay. The undersigned sustained the objection, and marked the exhibits Proffers #1, and #2.

Live testimony was given at the hearing by following:

1. Erin Segady, the Claimant

FINDINGS

In making my findings of fact and conclusions of law in this claim, I have carefully reviewed all of the evidence presented including live testimony and documentary evidence. I have observed the candor and demeanor of the Claimant. I have resolved all of the conflicts in the evidence. I have considered the argument and memoranda of counsel. I have not attempted to painstakingly summarize the substance of the Claimant's testimony or the testimony of the deposition witnesses, nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. Based upon the foregoing, the evidence and the applicable law, I make the following determinations:

1. The foregoing stipulations of the parties were consistent with the evidence presented and are hereby adopted as findings of fact.
2. As stated above the Claimant testified at the time of hearing. She described the accident that occurred on October 9, 2001 and the treatment provided thereafter. I found her to be a credible witness. I accept her testimony that she has chronic problems with her shoulder and neck since the 2001 accident. I also accept her testimony that when she saw Dr. Mate in 2007, she told Dr. Mate about her 2005 automobile accident. This is consistent with the fact she reported the 2005 accident to Dr. Gomez who saw the Claimant (under the workers' compensation case) before Dr. Mate. Furthermore, I note that when Ms. Segady saw Dr. Fishman after the 2005 accident, she fully disclosed the

worker's compensation accident/injury to him. This suggests that Ms. Segady does not have any tendency or inclination to withhold information from her health care providers.

3. The pending claims involve Claimant's entitlement to ongoing medical treatment related to the compensable injury. In considering this issue I find that Claimant has sustained a compensable injury and I accept the 3% permanent impairment assigned by Dr. Mate as of April 7, 2009. This rating is substantiated by objective medical evidence including the cervical MRI dated February 17, 2004.

4. In reaching my decision I have also considered the deposition testimony of Mr. Victor Albury. Mr. Albury acknowledged that the E/SA accepted the 3% impairment rating assigned by Dr. Mate and paid impairment benefits based on that rating. The fact that the E/SA accepted a 3% permanent injury related to the compensable accident is consistent with my finding that the 3% rating assigned by Dr. Mate is, indeed, appropriate. Moreover, after becoming aware of Claimant's 2005 motor vehicle accident, the E/SA continued to treat the Claimant's cervical injury sustained in her industrial accident.

5. In reaching my decision I have also carefully considered the deposition testimony of Dr. Mate. As stated above I accept his testimony at his first deposition that the Claimant sustained a permanent impairment related to the compensable injury. I find that this is consistent with the authorized treatment for the injury provided by Dr. Grenn, Dr. Wilson and Dr. Blumenfeld all of which occurred before the October 3, 2005 automobile accident. It is also consistent with the 2004 cervical MRI which showed a disc defect

at C6-7. E/SA's assertion that the Claimant's 2005 motor vehicle accident breaks the causation chain is misplaced as the Claimant had the C6-7 defect prior to the 2005 motor vehicle accident. While I understand that at Dr. Mate's second deposition he recanted from his opinion that the 3% rating was attributable to the compensable injury, I find that this is not consistent with the evidence as a whole (including the 2004 cervical MRI). Further, I find that at the time of the second deposition Dr. Mate appeared adversarial and he was simply "parroting" the E/SA's position on the issue of whether Claimant sustained a permanent impairment related to the compensable injury.

6. While I find that Claimant is entitled to continuing care for the compensable injury I do not award all of the medical items claimed. I find that after April 7, 2009, Ms. Segady received appropriate palliative care from Dr. Mate (who is a neurologist). However, it is clear that Dr. Mate no longer wishes to treat the Claimant. On this point, the E/SA's numerous ex-parte conferences with Dr. Mate (which seem to me to have been unnecessary) soured Dr. Mate's relationship with Ms. Segady. Based upon the foregoing, I find a neurologist (to replace Dr. Mate) is reasonable and medically necessary.

7. In reaching my decision I have considered each and every defense asserted by the E/SA. Based on my finding that Claimant has sustained a compensable injury which is permanent, I find none of these defenses support a complete denial of continuing care under the circumstances of this case. *See: Jackson v. Merit Electric*, 37 So. 3d 381 (Fla. 1st DCA 2010, and *Homier v. Family Auto Mart*, 914 So.2d 1071 (Fla. 1st DCA 2005)

ADJUDICATION/ DECREE

WHEREFORE IT ORDERED AND ADJUDGED as follows;

1. The E/SA shall authorize a neurologist to replace Dr. Mate, and provide continuing care as the nature of the compensable injury requires.
2. The claims for authorization of physical therapy, a pain management doctor and Dr. Blumenfeld are denied.
3. The claim for payment of Dr. Blumenfeld's bills relating to treatment provided between April 21, 2010 and May 22, 2010 is denied.
6. The E/SA shall pay Claimant's counsel attorney fees and costs, and jurisdiction is reserved as to the amount.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County,

Florida, this 21 day of January, 2011.




HONORABLE JUDGE TIMOTHY M. BASQUILL
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was e-mailed on this 21 day of January, 2011, to counsel listed:

Harvey Kaufman, Esquire
E-mail: harveykaufman@bellsouth.net,

Sandra Wilkerson, Esquire
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Secretary to Judge Timothy Basquill