

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER E502338

**DORIS JEAN PACE,
EMPLOYEE**

CLAIMANT

**ARKANSAS DEPARTMENT
OF HEALTH, EMPLOYER**

RESPONDENT

**ARKANSAS INSURANCE DEPARTMENT,
PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED MAY 27, 2005

Hearing conducted March 2, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Donald S. Ryan, Attorney at Law, Little Rock, Arkansas, appearing for the claimant; and

Mr. Richard S. Smith, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the claimant's request for a wheelchair ramp which, she contends, is an exception to the statute of limitations.

Specifically, the claimant contended that she has been provided wheelchairs in the past and should be provided a wheelchair ramp to her house, pursuant to the statute of limitations exception for ambulatory devices in Ark. Code Ann. §11-9-702(b). An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that a wheelchair is neither reasonably necessary in connection with the compensable injury, within the meaning of Ark. Code Ann. §11-9-508, nor an ambulatory device or other item subject to the statutory exception to the statute of limitations, under Ark. Code Ann. §11-9-702(b).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; on February 2, 1993, the claimant suffered a compensable injury to her right leg and knee; as a result of her compensable knee injury, the claimant underwent complete knee replacement surgery on January 27, 1995; her healing period ended March 31, 1996; her average weekly wage on the date of injury was \$376.06; and the last replacement of durable medical equipment, a wheelchair, occurred May 29, 2003.

3. The preponderance of the evidence fails to show that the claimant is entitled to a wheelchair ramp at the expense of the respondents.

DISCUSSION

On February 2, 1993, during her employment with the Health Department as a nurse, the claimant suffered admittedly compensable injuries to her right leg and knee while trying to put supplies in a supply closet. The injury occurred when she climbed onto a VCR monitor which was on a utility cart, slipped and fell, landing in an upright position, hard on her right foot, and then falling backward against the door frame as she tried to balance herself.

She was afforded prompt medical care, eventually including knee surgery. After she returned to work in 1996 she eventually sought medical care for problems with her back and was advised by her treating physician, Dr. William Ackerman that the fall had injured her back. Her earlier claim

that she suffered a compensable back injury during the incident was denied after a hearing conducted October 23, 2001. Pace v. Arkansas Department of Health, Ark. WCC #E502338 (January 18, 2002).

Mindful that Ark. Code Ann. §11-9-702(b) bars a claim for additional compensation unless filed within one year from the date of last payment of compensation or two years from the date of the injury, the claimant contends that her request for a wheelchair ramp falls under the exception for replacement of ambulatory devices and similar items provided in Ark. Code Ann. §11-9-702(b)(2).

It was her testimony that she uses her wheelchair about 16 hours a day and uses a walker for short distances. However, she needs the assistance of her husband to negotiate the one step leading from her house to the family vehicle. The wheelchair has been in use for about nine years. However, the claimant, approximately 66 years of age at the time of the hearing, asserted that her husband's health has deteriorated so that it causes him pain to assist her up and down the step.

The respondents argued that the one year - two year statute of limitations for additional benefits described in Ark. Code Ann. §11-9-702(b)(1) bars the claim. They point out that the injury occurred February 2, 1993, and the claim was received by the Commission September 3, 2004. They further note that the last benefits for indemnity were paid March 31, 1996, while the last medical services were provided as of February 7, 2000, so that the claim expired February 7, 2001. They contend that replacement of the wheelchair on May 29, 2003, did not toll the statute. They also contend that a wheelchair is not an ambulatory device or other medical supply "previously furnished" by the respondents.

In that regard, although it may seem appropriate for the claimant to be provided with a wheelchair ramp in order to facilitate the use of the wheelchair without risking injury to her husband,

the statute of limitations bars such claims with the exception of claims for replacement of certain medial supplies. However, the exception for such claims applies to replacement of medical supplies where the respondents “previously furnished such medical supplies....” Ark. Code Ann. §11-9-702(b)(2). Thus, the provision is not available to the claimant’s request since the ramp was not previously furnished, even if it should be considered a medical supply under the description of other apparatus permanently or indefinitely required as a result of the compensable injury.

For the foregoing reasons, the claimant’s request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge